

Polite Fascism Contracts the Right to Vote

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Column: Michael Collins

Another Supreme Outrage



Justices Stevens, Kennedy, and Roberts combined with Scalia, Alito, and Thomas to take voting rights back to 1898. [Image](#) (left), [Image](#) (right)

Polite Fascism Contracts the Right to Vote

[William Crawford, et al, Petitioners 07-21 v. Marion County Elections Board et al.](#)

[Indiana Democratic Party, et al., Petitioners 07-25 v. Todd Rokita, Indiana Secretary of State, et al.](#)

U. S. ____ (2008) Opinion of STEVENS, J.

[Michael Collins](#)

"Scoop" Independent News
Washington, D.C.

They wear their robes but leave the hoods off, the polite justices of the Supreme Court. They write decisions then issue them in a formal setting, behind the columns of a capitol monument, with a history that confers a dignity not deserved. The Court embodies the dilemma of our modern culture. The most awful acts are committed with bland justification by polite people who hide behind institutional trappings; for the sake of the few, at the expense of the many.

When a vital right is denied to any group or class of citizens, the people suffer a great loss. They must endure mean spirited laws put forward as rational policy then contend with the dual reality of apparently legitimate institutions conducting blatantly illegitimate attacks on the people. Brutal bigots and snarling attack dogs have been replaced with somnolent justices affirming the outrages of smiling politicians and the bureaucrats who follow their orders. The net result is the quiet evisceration of our most important rights in a manner that puts the people into a light trance of continual acceptance.

The struggle for voting rights in the 1960's represents one of the finest periods in our nation's history. There was a rapid awakening to the decades of harsh reality endured by black citizens in the South. Most startling to the majority, unaware of this culture of injustice, was the near total absence of the right to vote for black citizens.

The issue of voting rights was and is fundamental to our political consciousness. The blatant violation of those rights, the effort to keep almost all black citizens from voting, created a national outrage. Unaffordable poll taxes just to vote, "literacy" tests arbitrarily administered to fail members of one race only, frequent intimidation at the polls, and the other flagrant indignities provided an immediate education to those who read, watched and listened. This generated broad support for voting rights legislation to expand the franchise to all citizens.

Most of those who had the rights were unable to tolerate the outrages they saw inflicted on their fellow citizens. Those who endured the violations laid down their bodies; risked and gave their lives. They would no longer tolerate the attack on their very existence as men and women of equal stature from those who abused them.



March on Washington for civil rights, 1963. PingNews.Com cc

The Voting Rights Act of 1965 passed with overwhelming majorities in the U.S. Senate and the House of Representatives. It was sponsored in the Senate by the Republican leader, and was implemented with a certainty and clarity that shocked the perpetrators of a fraudulent election system. Voting rights did not confer the benefits of social justice. However, those rights did move to correct a key systemic inequality of political participation.

We were awake as a nation for a brief period, unified in the demand for the right to vote. The struggle to expand the franchise has been ongoing throughout our history from white male property owners to all white males. For a period after the Civil War, both black and white males voted until white supremacy regained control in the old South. The women's suffrage movement was the last major expansion of the franchise before the great civil rights movement of the 1960's and beyond which demanded voting rights for blacks and then Latinos.

A new trend has emerged, one that takes the nation back to the post-Reconstruction period of the 1880's when black citizens lost their recently gained right to vote and participate in civic life.

Contracting the Vote

The April 28, 2008 [decision](#) upholding Indiana's photographic identification (photo ID) law by the Supreme Court of the United States is a major blow to voting rights.

Bush versus Gore dissenter, Justice John Paul Stevens, spoke for the majority. In [Crawford et al. versus the Marion County Board of Elections et. al.](#), the Court decided that Indiana's law was constitutional since it represents what may be a valid concern by the state, even though Stevens' acknowledged that Indiana presented no evidence of in-person "voter fraud", the alleged "threat" that made the law necessary.

Justice Stevens and the majority failed to consider that the Indiana law was passed on a straight party-line vote with only Republican legislators supporting it and all Democrats opposing. Why was it a party line vote? Like many other voter identification laws, Indiana's version is [clearly biased](#) against potential Democratic voters and constituencies.

The Court majority was unimpressed by the fact that many voters [won't have a photographic identification](#), according to a number of studies. The Court ignored a [recent study](#) showing Indiana's law will restrict the vote and that photo identification requirements are associated with [10% less turnout](#) than is seen with less restrictive verifications.

Indiana's Voter Identification Law

The Court decision allows the [Indiana law](#) to stay in place. In order to vote, the law requires that registered voters present a current state or federal identification with a photograph that bears a name [matching](#) the voter's name on the registration records. Indiana is one of the seven states requiring photographic identification (photo ID). The other states are Florida, Georgia, Hawaii, Indiana, Louisiana, Michigan, and South Dakota.

Voters who show up in person without a photo ID are offered a [provisional ballot](#). The voter must return to the election board by noon ten days after the election with proof of identification, i.e., photo ID. Failing that, the voter must sign an affidavit asserting that either he or she can't afford the identification or has a religious objection to being photographed. If there is no other challenge, the vote is counted. Sound complicated? How many would go through all these steps to cast a ballot? Why should anyone be required to do so?

You [don't need a photo ID](#) at if you vote by absentee-by-mail (11% of Indiana voters used absentee-by-mail or in-person in the 2008 Indiana presidential primary). In addition, if you're confined to your home or a facility for medical reasons or if you have a disability and can't get to your precinct, a member of the state "travel board" will bring you a ballot and take your vote. There is no requirement for photo ID in either of these instances.

The False Alarm of Voter Fraud Used to Restrict the Vote

Voter fraud refers to in-person voting by individuals unqualified to vote. The alleged phenomenon of "voter fraud" is the justification for restrictive voter identification laws like Indiana's. Voter identification laws specify the identification that voters present before they're allowed to cast a ballot. Supposedly, tight voter identification laws reduce voter fraud. Of course, if there is no voter fraud to speak of, there's no legitimate justification to risk the right to vote by restrictive identification laws.

Voter fraud differs from [election fraud](#), which refers to the wholesale theft of [elections](#) through manipulation of voting and tabulating [machines](#), [gerrymandering](#) (the distortions of districts to secure elections), and [other methods](#) of [rigging an entire election](#).

The Bush Justice Department made a [major effort](#) to document an epidemic of [voter fraud](#). The [U.S. Attorneys](#) had extensive training and intense [encouragement](#) to make cases. The failed results of this effort are [well documented](#) and apparent from the total convictions displayed in the chart below. The political [manipulations](#) behind this effort were one of the causes of the [U.S. Attorney's scandal](#).

Does voter fraud happen at any degree of frequency? Are there hordes of unqualified voters who manage to vote illegally without detection?

Federal Prosecutions for Illegal Voting 2002 – 2005

CASTING A FALSE BALLOT	DISPOSITION				
	Dismissed	Acquitted	Pleaded Guilty	Convicted	Total
False claim of eligibility					
Non-citizen	4	1	3	11	19
Felon	4	1	3	2	10
Multiple voting	3	1	5		9
TOTAL	11	3	11	13	38

Source: U. S. Department of Justice, Criminal Division, Public Integrity Section, Election Fraud Prosecutions & Convictions, Ballot Access & Voting Integrity Initiative, October 2002 – September 2005 (n.d).

From [The Politics of Voter Fraud, L.C. Minnite \(p. 9\)](#)

Federal statistics show hardly any voter fraud prosecutions by the Department of Justice. Where's the epidemic of voter fraud or even a significant problem?

This evidence should be definitive. Only 38 cases of voter fraud were prosecuted from October 2002 through September 2005. Fourteen cases were dismissed and 24 resulted in guilty pleas or convictions.

There were 120 million voters casting ballots in the 2004 election. Add the total number of voters in all the other federal elections between October 2002 and September 2005. The total prosecutable cases of voter fraud that the U.S. Department of Justice could find consisted of 38 charged and 24 convicted. There is no epidemic of voter fraud.

It is imperative that we understand that the voter fraud epidemic is a pure [fabrication](#) and [fantasy](#).

Since voter fraud barely exists, there is no rationale for tightening voter identification requirements. Given the real risk of reducing turnout there is every reason to avoid any additional laws that inhibit voters and voting. Yet [twenty-five states](#) have significant voter identification requirements, including seven that mandate official photo identification. The Court gave a green light to all states to create meaningless identification requirements if it serves the majority interests in state legislatures.

Photo ID's as an Effective Barrier to Voting

A [statewide survey of 1,000 registered voters](#) was conducted in Indiana in 2007 by the Institute for the Study of Ethnicity and Race, University of Washington. The study measured the impact of Indiana's new voter identification requirement, the law upheld by the Supreme Court. The highly pertinent results below show the clear bias of the law:

Indiana Registered Voters	Whites	Blacks
Voter ID + Name Match	84.2%	78.2%
No Valid Voter ID + Name Match	15.8%	21.8%
Indiana General Population		
Voter ID + Name Match	83.2%	71.7%
No Valid Voter ID + Name Match	16.8%	28.3%

[Data from Tables 1.1, 1.1.b, and 2.1 \(pp. 18-19\)](#)

Six percent fewer black registered voters reported sufficient voter identification for Indiana elections. Of the general population, a pool for new voters, nearly 12% fewer black citizens have sufficient identification.

In addition, the Indiana study found that 21% of registered voters without a high school diploma lacked sufficient identification to vote while 11.5% with a college diploma lacked sufficient identification.

Most pertinent to the 2008 presidential election, the study confirmed the political bias of the Indiana voter identification law. [The study concluded:](#)

"Among registered voters with valid ID, 41.6% consider themselves Republican⁸ and 32.5% are Democrats. In contrast, among registered voters without proper ID, 34.8% are Republican and 38.0% are Democrats. Beyond the exclusion of certain demographic groups outlined above, this data suggests that a greater number of Democrats are excluded from voting under Indiana's voter identification laws. (p. 12).

[A major study](#) on the impact of voter identification was conducted by scholars at Rutgers University and the Moritz School of Law, Ohio State University. The authors analyzed 2004 election data from around the country. Turnout in states with photo ID requirements was 58.1% compared with 64.2% in states that required voters to give their name as the main requirement ([Rutgers, 2006](#)). That's 10% lower turnout associated with a photo identification requirement.

2004 Election - Nationwide	
Voter ID Required	Mean Turnout
State Name	64.2%
Photo ID	58.1%
Difference	10.5%

[Summary data from Rutgers Study \(p. 6\)](#)

In 2004, turnout was 10% higher in states where voter identification involved stating one's name than in states where a photo ID was required.

The researchers backed out states with photo ID requirements and found that Latino and black turnout was down disproportionately in states with another intensive identification requirement, signing an affidavit stating that you are the voter that you claim to be ([Rutgers, p. 11](#)).

A recent study on [Georgia's voter identification law](#) was conducted by scholars at the University of Georgia, Athens. They looked at the most common voter identification, a driver's license. Race and age (being black, being young) were associated with the absence of a driver's license. Blacks had a much higher probability than whites of lacking a driver's license. Registrants without drivers' licenses were 50% less likely to vote in a general election. Those without photo ID were significantly more likely to vote in Democratic rather than Republican primaries. These findings show the highly partisan impact of the requirement for photographic voter identification.

This evidence is clear. Voter ID laws have a negative effect on minorities and, it appears, younger and less educated voters as well. The requirement reduces turnout and, by doing so, it reduces the right of citizens to vote, all to prevent a non-existent crime.

Partisan Evidence, Partisan Decision

In deciding for Marion County and the state of Indiana, the majority cited evidence from the federal Election Assistance Commission (EAC). The politically appointed commission administers the Help America Vote Act (HAVA). HAVA provides funding and sets standards for the nation's voting technologies, voter registration databases, and other election systems. The EAC actively sought to [suppress](#) then rewrite two reports it had commissioned that showed voter fraud to be insignificant and found voter intimidation at polling places to be a problem. The EAC has a [troubled record](#) and is a source highly biased in favor of the current administration.

The Court cited the Carter-Baker Commission on Federal Election Reform co-chaired by James A. Baker III, who was the architect of the heavy-handed 2000 [Republican effort](#) that forced Bush into the White House. This effort included delaying tactics like the famous "[preppy riot](#)," and other subterfuges to see that the Florida vote was not verified through a recount. The Commission also came under [harsh criticism](#) for the photo ID recommendation. This is hardly a serious source unless name-dropping is a criterion.

Most remarkably, the Court admitted that there was very little evidence proving that voter fraud even exists. In footnote 12 of the Stevens' opinion, the Court evaluated evidence of voter fraud in Indiana and found no evidence of in-person voter fraud, the entire rationale for the law.

Stevens went looking elsewhere and claimed that "There remains scattered evidence of voter fraud." And he found it -- one instance -- in the 2004 Washington gubernatorial race. Nineteen "ghost voters" were discovered (based on an oral opinion by a local judge) and a news report mentioned of one individual attempting in-person voter fraud. Twenty

examples of voter fraud are all the Court could muster to affirm a law that may affect the vote of millions and change elections. ([See comment on footnotes 11, 12, and 13](#))

"But if a nondiscriminatory law is supported by valid neutral justifications, those justifications should not be disregarded simply because partisan interests may have provided one motivation for the votes of individual legislators." [Justice John Paul Stevens, Majority Decision, Crawford et al. v. Marion County Election Board et al., Apr. 28, 2008](#)

The partisan sources and justifications used to support Judge Stevens' ruling should not be disregarded either. The evidence selection process speaks volumes about the Court's intention to contract rather than expand the franchise

In addition to biased evidence, a most compelling argument for the partisan nature of the decision is found in [the Indiana law](#). As mentioned, absentee by mail and absentee by hospitalization or due to disability voters do not have to present a photo ID when they vote.

Are absentee and in-person voters at equal risk for committing voter fraud? If so, then the Indiana law creates two classes of voters: in-person voters who are subjected to more restrictive voter identification and absentee voters who have less restrictive identification standards.

This is a glaring inconsistency. It gives an advantage to those who choose to vote absentee. Is there some reason to believe that this class of voters is inherently more honest than in-person voters? If not, using the Court's own logic, the failure to identify and act on that inconsistency shows a less than serious attitude toward the supposed threat of "voter fraud."

This decision resurrects a trend in voting rights not seen since the post-Reconstruction era following the Civil War. During the decade following the Compromise of 1877, black participation in civic life in the South was reduced to an absolute minimum by deliberate plan. The plan's goal was to severely restrict the voting rights of black citizens.

Resurrecting the "Redeemer" Coalition

The "[Compromise of 1877](#)" settled the protracted dispute over the 1876 presidential election between Democrat Samuel J. Tilden and Republican Rutherford B. Hayes. Tilden had more popular votes but there was a dispute over the Electoral College count. A "blue ribbon" commission spent months trying to settle the dispute.

Finally, a "compromise" emerged. Tilden withdrew his claim on the presidency in return for a promise by Hayes to withdraw federal authority from the South. This ended the participation of black citizens in elective politics as voters, candidates, and office holders. During Reconstruction, blacks voted in large numbers, won elective office, and served at

all levels of government. This multi-cultural democracy ended just a few years after the compromise when [white domination](#) returned to the South.

The Democratic Party of the South was the political arm of this effort, while the Ku Klux Klan and other groups carried out paramilitary and terror functions (murder, rape, lynching, etc.). Those participating in the political arm were known as "The Redeemers," whites who sought "redemption" from the difficulty they experienced sharing power with black citizens.

A true moment of redemption for white supremacy came when the Supreme Court of the United States issued the [Williams versus Mississippi](#) decision. This decision allowed other states in the South and elsewhere to adopt the voter suppression provisions of the Mississippi Constitution which were specifically designed to restrict the voting rights of black citizen's rights and minimize their participation in civic life.

Plaintiff Williams sought to have his murder conviction overturned because he'd not been tried by a jury of his peers. A black citizen, Williams pointed out that juries were chosen on the basis of voter rolls. When they registered to vote, blacks were routinely discriminated against through a variety of means, including the [literacy test](#) required to register. White registrars routinely failed blacks and passed whites regardless of the results. Williams argued that he had not received a trial by jury of his peers, since black Mississippians were systematically excluded from the jury.

The Court failed to take this obvious fact into account and decided:

[The Mississippi Constitution and laws] "... do not on their face discriminate between the races, and it has not been shown that their actual administration was evil; only that evil was possible under them." [Williams v. Mississippi, Supreme Court of the U.S., Apr. 25, 1898](#)

The justices either didn't know or didn't care that the Mississippi Constitution had been constructed by the Redeemers and others with the specific intent of keeping black voters from voting.

The [affirmation of the Mississippi Constitution](#) by the U.S. Supreme Court in Williams was followed by the spread of that document's deliberately conceived methods of voter suppression and voter disenfranchisement to states throughout the South and the nation. Poll taxes, literacy tests, and felon disenfranchisement had their origins in this document, one the Court affirmed. While detached from their historical origins, provisions of the Mississippi Constitution of 1890 are well placed in state constitutions across the country.

A Court and Government against the People

The Court must have known that the millions at risk of losing their voting rights are predominantly black, less educated, and young. Yet the Court made the most political decision since it held its own "election of nine" in 2000 to give Bush the presidency.

This Court also resurrected a doctrine that discriminates against minority citizens that mirrors the Williams versus Mississippi case of 1898. The Court's majority redeemed the once-vanquished doctrine of restricting and contracting the vote.

This is the Court that allows torture by federal authorities; sits idly by as habeas corpus is removed from our laws; allows our votes to be counted in private by partisan corporations; sanctions illegal wars declared only by the president; and rarely misses an opportunity to support the interests of large corporations over those of citizens. Now the Court is collaborating with those who would restrict the vote.

In order to remain connected to reality, it's time to admit and proclaim the obvious fact -- our country is approaching a lawless state. The highest court issued a blatantly political decision that denies the vote in a way that places one political party at a significant disadvantage as we approach a presidential election and, more importantly, threatens to disenfranchise millions.

As it did this, the Court denied the most [fundamental tenet](#) of our political history -- the right of all citizens to select their representatives. Today it's the poor and minorities. Which segment of the population will be losing its right to vote next?

How will the people ever fully restore the vanishing right of habeas corpus ([see note](#)) and other civil liberties? How will the movement for social justice ever be revitalized?

Election fraud has now been expanded in scope to include the nation's highest court, which has become the enemy of the people. Justice Stevens should read his own words from his dissent in [Bush versus Gore](#):

"Although we may never know with complete certainty the identity of the winner of this year's Presidential election, the identity of the loser is perfectly clear. It is the Nation's confidence in the judge as an impartial guardian of the rule of law." [Justice John Paul Stevens, Dissent, Bush v. Gore, Dec.12, 2000](#)

ENDS

Special thanks to The Scholar for his inspiration and to Jill Hayroot, Susannah Pitt, and Alexis Collins for their comments.

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Resources:

- [List of evidence presented in Crawford versus Marion County \(Indiana\) Board of Education. Indiana Voter ID case just decided by U.S. Supreme Court, The Brennan Center, New York University, Apr. 2008.](#)

- [The Disproportionate Impact of Indiana Voter ID Requirements on the Electorate, M. Barreto, S. Niño, & G. Sanchez, Washington Institute for the Study of Ethnicity and Race, Nov. 2007](#)
- [Worth a thousand words? An Analysis of Georgia's Voter Identification Statute, University of Georgia, M.V. Hood III & C. Bullock, Apr. 2007](#)
- [Protecting the franchise or restricting it: The effects of voter identification on turnout, T. Vercelotti & D. Anderson, Rutgers University, 2007](#)
- [Loser Take All: Election Fraud and The Subversion of Democracy, 2000 - 2008, Mark Crispin Miller \(Ed.\), 2008](#)
- [The Politics of Voter Fraud, L.C. Minnite, Project Vote, 2007](#)
- [Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States, C. Uggen & J. Manza., The American Sociological Review, 2002](#)
- [Ballot Manipulation and the "Menace of Negro Domination": Racial Threat & Felon Disenfranchisement in the USA, 1850 to 2002, A. Behrens, C. Uggen, & J. Manza, American Journal of Sociology, Nov. 2003.](#)

Note from page 8, line 2

**COMMENTS ON JUDGE STEVENS' PROOF
OF "VOTER FRAUD," OR LACK THEREOF
FOOTNOTES 11, 12, & 13**

[Michael Collins](#)

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1 Cite as: 553 U. S. ____ (2008) Opinion of STEVENS, J.

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SUPREME COURT OF THE UNITED STATES

Nos. 07--21 and 07--25

WILLIAM CRAWFORD, ET AL., PETITIONERS 07--21 v.

MARION COUNTY ELECTION BOARD ET AL.

INDIANA DEMOCRATIC PARTY, ET AL., PETITIONERS 07--25 v. TODD ROKITA,
INDIANA SECRETARY OF STATE, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

[April 28, 2008]

JUSTICE STEVENS announced the judgment of the Court and delivered an opinion in which
THE CHIEF JUSTICE and JUSTICE KENNEDY join.

(break)

Cite as: 553 U. S. ____ (2008) Opinion of STEVENS, J. (pages 11, 12)

[Text from Judge Stevens' Majority Decision]

Voter Fraud

The only kind of voter fraud that SEA 483 addresses is in-person voter impersonation at polling places. The record contains no evidence of any such fraud actually occurring in Indiana at any time in its history. Moreover, petitioners argue that provisions of the Indiana Criminal Code punishing such conduct as a felony provide adequate protection against the risk that such conduct will occur in the future. It remains true, however, that flagrant examples of such fraud in other parts of the country have been documented throughout this Nation's history by respected historians and journalists,¹¹ that occasional examples have surfaced in recent years,¹² and that Indiana's own experience with fraudulent voting in the 2003 Democratic primary for East Chicago Mayor¹³--though perpetrated using absentee ballots and not in-person fraud--demonstrate that not only is the risk of voter fraud real but that it could affect the outcome of a close election.

[General comment.]

Stevens admits that "there is no evidence of any such fraud actually occurring in Indiana." That should have been the end of the reasoning process, law rejected. But that admission was immediately sabotaged by Stevens' search for an adequate justification for his vote. We will see that his justification for an Indiana law found at other times in history and other states is entirely inadequate. The majority opinion in this vital case rests nonexistent occurrences of voter fraud in Indiana and irrelevant or weak occurrences elsewhere.

[Footnotes from text above]

Footnote 11, Judge Stevens Majority Opinion

¹¹One infamous example is the New York City elections of 1868. William (Boss) Tweed set about solidifying and consolidating his control of the city. One local tough who worked for Boss Tweed, "Big Tim" Sullivan, insisted that his "repeaters" (individuals paid to vote multiple times) have whiskers: "When you've voted 'em with their whiskers on, you take 'em to a barber and scrape off the chin fringe. Then you vote 'em again with the side lilacs and a mustache. Then to a barber again, off comes the sides and you vote 'em a third time with the mustache. If that ain't enough and the box can stand a few more ballots, clean off the mustache and vote 'em plain face. That makes every one of 'em good for four votes.' "

A. Callow, *The Tweed Ring* 210 (1966) (quoting M. Werner, *Tammany Hall* 439 (1928)).

Comment on footnote 11: This is one of the most serious cases before the Court in years. It balances a law passed to prevent a problem that doesn't exist anymore with the outcome of that law which will, by available evidence, reduce voting (turnout) and disproportionately impact minorities, the less educated, and one political party to a much greater degree than the other. To make a statement like the following requires some

attention to detail. It also requires that support for the statement, a key argument for the decision, be credible.

flagrant examples of such fraud in other parts of the country have been documented throughout this Nation's history by respected historians and journalists,

But what we get is one story of one period of time, New York City in the 1860's that has nothing to do with voter fraud as a justification for the Indiana law. Boss Tweed had roving bands of thugs who would go from precinct to precinct and bully their way in to vote for Tweed's selected candidates. Does Judge Stevens think the Tweed technique is a threat to Indiana? How long would roving thugs disrupting precincts be tolerated in anywhere in the nation? Isn't this a problem local law enforcement could remedy quickly? While invoking charges of voter fraud "through the Nation's history," Stevens produced only one, antiquated instance that has nothing to do with the present circumstances.

In addition, he leaves out a great deal -- like the deliberate suppression of the vote in the old South and massive intimidation of immigrant groups that sought to exercise their right to vote.

[T. Campbell. Deliver the Vote: A History of Election Fraud, an American Political Tradition -- 1742 -- 2004. Avalon. New York, NY](#)

Footnote 12, Judge Stevens Majority Opinion

¹²Judge Barker cited record evidence containing examples from California, Washington, Maryland, Wisconsin, Georgia, Illinois, Pennsylvania, Missouri, Miami, and St. Louis. The Brief of *Amici Curiae* Brennan Center for Justice et al. in Support of Petitioners addresses each of these examples of fraud. While the brief indicates that the record evidence of in-person fraud was overstated because much of the fraud was actually absentee ballot fraud or voter registration fraud, there remain scattered instances of in-person voter fraud. For example, after a hotly contested gubernatorial election in 2004, Washington conducted an investigation of voter fraud and uncovered 19 "ghost voters." *Borders v. King City*, No. 05--2--00027--3 (Super. Ct. Chelan City., Wash., June 6, 2005) (verbatim report of unpublished oral decision), 4 Election L. J. 418, 423 (2005). After a partial investigation of the ghost voting, one voter was confirmed to have committed in-person voting fraud. Le & Nicolosi, Dead Voted in Governor's Race, Seattle Post-Intelligencer, Jan. 7, 2005, p. A1.

Comment on Footnote 12: This is a critical footnote. Stevens must establish that there is a crime that threatens the integrity of the election. He's already admitted that there are no real instances of in-person voter fraud in Indiana. He must find it elsewhere. How well does he do?

Here's the key line from the footnote:

"While the brief indicates that the record evidence of in-person fraud was overstated because much of the fraud was actually absentee ballot fraud or voter registration fraud, there remain scattered instances of in-person voter fraud."

In person voter fraud is the entire rationale for the Indiana law because that's what photo IDs are supposed to prevent. Judge Stevens tells us that the [Brennan Center](#) offered a brief that totally demolished the notion of any significant in-person voter fraud. Wait! Shouldn't that be the end of this exercise? No crime, no law to prevent the crime that could damage the participation of voters as indicated by the studies presented.

But the Judge betrayed his intent by continuing. Having this voter suppression law in place was so important to the court, Stevens grasped at straws. He found an instance in the 2004 election where "19 ghost voters" cast ballots but that was sourced from a "(verbatim report of unpublished oral decision)." He then quotes an article from the Seattle Post Intelligencer for the same election which Stevens says found one case of in-person voter fraud.

The proof of voter fraud used as a rationale for the Indiana voter identification law rests on one publicly reported case of voter fraud and one report on an unwritten court decision. Thus, a law in Indiana with the potential to discourage turnout, the other laws which have been measured to actually suppress turnout, and all the new laws that will do the same are based on a grand total of 20 cases of supposed in-person voter fraud, 19 of which require that we just take the word of a "verbatim" reporter.

The standard of proof displayed is entirely unpersuasive and inadequate by any logical or rhetorical standards. There's no point in further comment other than this. The court must assume that either nobody reads their footnotes containing the rationale for the decision or that those few who do, won't tell the larger audience that the standard of proof supporting a Supreme Court of the United States decision is laughable, at best, and, without doubt, entirely insufficient to support a major decision like this.

Footnote 13, Judge Stevens Majority Opinion

¹³See *Pabey v. Pastrick*, 816 N. E. 2d 1138, 1151 (Ind. 2006) (holding that a special election was required because one candidate engaged in "a deliberate series of actions . . . making it impossible to determine the candidate who received the highest number of legal votes cast in the election"). According to the uncontested factual findings of the trial court, one of the candidates paid supporters to stand near polling places and encourage voters--especially those who were poor, infirm, or spoke little English--to vote absentee. The supporters asked the voters to contact them when they received their ballots; the supporters then "assisted" the voter in filling out the ballot.

Comment on footnote 13: Footnote thirteen demonstrates the hypocrisy of the Court's decision. The corruption in the East Chicago mayoral election of 2003 involved absentee

ballots. Operatives for one of the candidates paid poor voters \$100 to file an absentee ballot, which the operative would fill out. This election occurred before the Indiana Voter ID bill at issue became law in January 2007. While Stevens was correct to cite this as a case of voter fraud, it's irrelevant to support Indiana's voter ID law.

The purloined voters did not attempt in-person fraud, the object of the voter ID law, they committed voter fraud through absentee voting. Had the court reviewed the Indiana law, or even the Voter ID section of the Secretary of State's web page, they would have found this:

[GENERAL INFORMATION ON ABSENTEE BALLOTS](#)

[From the Indiana, Secretary of State web page]

Note: Voters voting absentee-by-mail are NOT required to show photo ID.

- In order to vote absentee-by-traveling board, one of the following must apply:
 1. The voter expects to be confined, due to illness or injury, or the voter expects to be caring for a confined person at a private residence, on Election Day.
 2. The voter is a voter with disabilities and believes their polling place is not accessible to them.
- The ballot will be delivered to you by a bi-partisan absentee voter board who will be able to assist you with you ballot.
- Voters voting by traveling board are NOT required to show photo ID.

Had the Court evaluated the Indiana law for internal consistency as a means of judging the intent of the lawmakers, it would have noticed that absentee voting by mail does not require voters to produce a voter ID. If you are hospitalized or sufficiently disabled, the Indiana "travel board" will bring you an absentee ballot. Voters in these instances are not required to show a Voter ID.

Is there something more inherently honest about a voter mailing in their ballot that absents the need for a photo ID? Are hospitalized and disabled voters more trustworthy than in-person voters. If not then the standards for verifying that these voters are registered and qualified is sufficient for in-person voting. If these voters are like the majority who go to their precinct to vote, no more and no less prone to voter fraud, then the ruling allows a significant portion of the voters to cast ballots without sufficient checks against voter fraud.

See [Absentee Without Leave, Wall Street Journal, Oct. 30, 2006](#)

The 2001 National Commission on Federal Election Reform, a bipartisan group co-chaired by Gerald Ford and Jimmy Carter, found that local election officials have grown sloppy in handling absentee ballots. "Most states do not routinely check signatures either on applications or on returned ballots, just as most states do

not verify signatures or require proof of identity at the polls," noted John Mark Hansen, the director of research for the commission's report.

Note from page 10, paragraph 5

**\ ARBITRARY DETENTION AND TORTURE
MADE POSSIBLE FOR U.S. CITIZENS
THROUGH SUSPENSION OF HABEAS CORPUS IN
THE "MILITARY COMMISSIONS ACT"**

[Michael Collins](#)

Habeas corpus protects citizens from arbitrary detention by placing the burden on the state to justify and defend *any* detention. The state must show cause and allow the jailed citizen access to legal counsel to challenge the detention. This protection is a right that has evolved over nearly 800 years. It had been desired, no doubt, since the beginning of recorded history. The principle was established in 1215 in the [Magna Carta](#) and codified in 1679 in the [Habeas Corpus Act 1679](#).

It is so vital; the United States Constitution offers clear protection: "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it." Congress is the only branch of government empowered to suspend the writ.

The 109th Congress suspended habeas corpus when it passed the [Military Commissions Act](#). Thanks to that historic surrender, the executive branch can declare any citizen, you for example, an "enemy combatant." They can put you in jail indefinitely, refuse a trial, and refuse to even tell you why you're in jail. The same techniques approved for the ["enhanced interrogation"](#) (i.e., torture) of alien enemy combatants can be used on you, if someone in the executive branch simply puts your name on a list.

All of this follows from the simple declaration of your status by a Pentagon bureaucrat or politician. You cannot appeal the decision. But you do have the right to suffer indefinitely for an unspecified crime brought by an anonymous source, all in the secrecy of a prison here or abroad.

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Congressional Record: September 27, 2006 (House)

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MILITARY COMMISSIONS ACT OF 2006



Statement of the Hon. David Wu, (D, OR)

Mr. HUNTER. Mr. Speaker, pursuant to House Resolution 1042, I call up the bill (H.R. 6166) to amend title 10, United States Code, to authorize trial by military commission for violations of the law of war, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 1042, the amendment printed in House Report 109-688 is adopted and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

H.R. 6166

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Mr. WU. Mr. Speaker, I want to focus like a laser beam on the right of habeas corpus and the untoward effect of this legislation on habeas corpus. This is an ancient doctrine that has been with us since at least the days of Charles I. It has presented difficulties to many American Presidents from Jefferson to Lincoln to Grant to Roosevelt.

We have the power to do much in restricting habeas corpus; but we should do so very, very carefully because it is the protection from tyranny that our forebears sought in the Revolution.

Congress here is entering upon dangerous constitutional shoal waters, and it is, in my belief, unconstitutionally limiting access to habeas corpus. The courts have repeatedly ruled in a restricted fashion whenever Congress or the Presidency has restricted access to habeas corpus and each of us, not just the Supreme Court, but we in the Congress and those in the executive branch, we all take an oath to uphold the Constitution of the United States, and this act, by restricting habeas corpus, will not serve America well.

And by so restricting habeas corpus, this bill does not just apply to enemy aliens. It applies to all Americans because, while the provision on page 93 has the word "alien" in it, the provision on page 61 does not have the word "alien" in it.

Let us say that my wife, who is here in the gallery with us tonight, a sixth generation Oregonian, is walking by the friendly, local military base and is picked up as an unlawful enemy combatant. What is her recourse? She says, I am a U.S. citizen. That is a jurisdictional fact under this statute, and she will not have recourse to the courts? She can take it to Donald Rumsfeld, but she cannot take it across the street to an article 3 court.

This bill applies to every American, regardless of citizenship status.