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NOTE

Show Me Your ID: Missouri Voter Identification Laws and the Right to Vote

Priorities USA v. State, 591 S.W.3d 448 (Mo. 2020) (en banc).

Tyler M. Ludwig*

I. INTRODUCTION

Nearly fifteen years ago, the Supreme Court of Missouri held that “the right to vote is fundamental to Missouri citizens” and is afforded protections against voter identification requirements beyond what is provided by the United States Constitution.¹ Since that time, state lawmakers have made numerous attempts to impose more stringent voter identification requirements.² In *Priorities USA v. State*, the Supreme Court of Missouri struck down the latest of those attempts for unconstitutionally infringing upon

* B.S. Political Science, Truman State University, 2018; J.D. Candidate, University of Missouri School of Law, 2021. I would like to thank Professor Rigel Oliveri for her insight and guidance during the writing of this Note, as well as the *Missouri Law Review* for its help in the editing process. Since this Note was first selected for publication, America lost an icon of the voting rights movement in Representative John Lewis. Nearly two centuries after the founding of this country and a century after the fall of the Confederacy, John Lewis marched and shed blood for Black Americans to be given rightful access to the ballot box. I would like to dedicate this Note to his memory and highlight the sacrifices that he and so many others made in the long fight for voting rights. As Representative Lewis himself said, “The vote is precious. It’s almost sacred. It is the most powerful nonviolent instrument or tool that we have in a democratic society.” Valerie Strauss, *The prescient commencement speech Rep. John Lewis gave in 2016*, THE WASHINGTON POST (Jan. 16, 2017 11:18 A.M.), <https://www.washingtonpost.com/news/answer-sheet/wp/2017/01/16/the-prescient-commencement-speech-rep-john-lewis-gave-in-2016/> [https://perma.cc/YV85-4G7F]. We should constantly remember just how precious the right to vote is, and we must do everything we can to protect it.

1. *Weinschenk v. State*, 203 S.W.3d 201, 211–12 (Mo. 2006); see *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 202–03 (2008).

2. See, e.g., Reid Wilson, *Missouri Likely To Pass Voter ID Bill This Year*, WASH. POST (Jan. 31, 2014, 6:00 AM), <http://www.washingtonpost.com/blogs/govbeat/wp/2014/01/31/missouri-likely-to-pass-voter-id-bill-this-year/> [https://perma.cc/6C5Z-CQR7].

the right to vote.³ Part II of this Note examines the facts and holding of that case. Part III examines the history, critiques, and challenges of voter identification (“ID”) laws both in Missouri and nationwide. Part IV analyzes the legal reasoning behind both the majority and dissenting opinions in *Priorities USA*. Finally, Part V of this Note then examines the future of voter ID requirements in Missouri and argues that ongoing attempts to impose tightened requirements have the potential to do harm to Missouri voters without providing any clear benefits.

II. FACTS AND HOLDING

In 2016, Missouri voters passed a constitutional amendment allowing the state legislature to create requirements, including using photo IDs, for voters to identify themselves at the polling place.⁴ The Missouri legislature subsequently passed Missouri Revised Statutes Section 115.427, establishing new requirements for Missouri voters to identify themselves in order to cast a ballot in public elections.⁵ The law, which became effective in 2017, provides three options for voters.⁶

The first option allows voters to present an acceptable form of personal identification, as set forth by the statute.⁷ The statute expressly allows for the use of a nonexpired Missouri driver’s license or of a nonexpired or nonexpiring Missouri nondriver’s license.⁸ The statute also allows for the use of any other form of identification issued by the state or federal government

3. 591 S.W.3d 448 (Mo. 2020).

4. Jack Suntrup, *Missouri’s Controversial Voter Photo ID Rules ‘Eviscerated’ by State Supreme Court*, ST. LOUIS POST DISPATCH (Jan. 15, 2020), https://www.stltoday.com/news/local/govt-and-politics/missouri-s-controversial-voter-photo-id-rules-eviscerated-by-state/article_8ef4ae55-bf09-5a20-93b5-50ed24c5c466.html [<https://perma.cc/AC6X-EUU7>]; MO. CONST. art. VIII, § 11 (“A person seeking to vote in person in public elections may be required by general law to identify himself or herself and verify his or her qualifications as a citizen of the United States of America and a resident of the state of Missouri by providing election officials with a form of identification, which may include valid government-issued photo identification. Exceptions to the identification requirement may also be provided for by general law”).

5. *Priorities USA*, 591 S.W.3d at 451; MO. REV. STAT. § 115.427 (Mo. Supp. 2019).

6. *Priorities USA*, 591 S.W.3d at 451 (citing § 115.427).

7. *Id.*

8. MO. REV. STAT. § 115.427.1(1)–(2).

that includes the name of the individual to whom the document was issued,⁹ a photograph of the individual, and an expiration date.¹⁰

The second option allows voters who lack a statutorily acceptable form of personal identification, but are otherwise qualified to vote, to cast a ballot if they do two things.¹¹ First, they must present a form of non-photo identification as specified by the statute, such as a current utility bill or bank statement or some type of Missouri student ID.¹² Next they must execute a statutorily specified affidavit.¹³ The affidavit requires the individual to aver that they are the person listed in the precinct register, that they do not possess a form of personal identification, that they are eligible to receive a Missouri non-driver's license free of charge, and that they are required to present a form of personal identification to vote.¹⁴

The third option allows voters who choose not to execute the aforementioned affidavit to cast a provisional ballot.¹⁵ This ballot will be counted if either the voter returns to the polling place during the polling hours and provides an approved form of photo identification.¹⁶ Alternatively, the ballot will also be counted if the election authority compares the individual's signature with the signature reflected on the election authority's file and confirms the individual is eligible to vote at that particular polling place.¹⁷

Priorities, USA, an organization which promotes voting rights,¹⁸ and West County Community Action Network, an organization which advocates

9. The name must substantially conform to the most recent signature in the individual's voter registration record. MO. REV. STAT. § 115.427.1(3)(a).

10. MO. REV. STAT. § 115.427.1. The document must either be nonexpired or have expired after the date of the most recent general election. MO. REV. STAT. § 115.427.1(3)(c).

11. *Priorities USA v. State*, 591 S.W.3d 448, 451 (Mo. 2020) (en banc) (citing MO. REV. STAT. § 115.427 (Mo. Supp. 2019)).

12. *Id.* (citing MO. REV. STAT. § 115.427 (Mo. Supp. 2019)). Other types of acceptable identification listed in the statute are identification issued by the state of Missouri, an agency of the state, or a local election authority of the state, identification issued by the United States government or agency thereof, a copy of a government check, paycheck, or other government document that contains the name and address of the individual, and other identification approved by the secretary of state under rules promulgated pursuant to this section. MO. REV. STAT. § 115.427.2.

13. *Priorities USA*, 591 S.W.3d at 451 (citing MO. REV. STAT. § 115.427 (Mo. Supp. 2019)).

14. *Priorities USA*, 591 S.W.3d at 451 (citing § 115.427).

15. *Id.*

16. *Id.*

17. *Id.*

18. *Protecting the Right to Vote*, PRIORITIES, USA, <https://priorities.org/issue/protecting-right-vote/> [<https://perma.cc/5D8X-5L7C>] (last visited Jan. 27, 2020).

for racial justice,¹⁹ filed a petition for declaratory and injunctive relief against Missouri's Secretary of State.²⁰ They alleged that the new voter identification requirements restrict the right to vote in violation of the Missouri Constitution by imposing burdens on prospective voters who face difficulties adhering to the requirements.²¹ After a bench trial, the Cole County Circuit Court found that the law was constitutional, except for the affidavit provision.²² The circuit court found that the affidavit requirement impermissibly infringed on an individual's right to vote because it was contradictory and misleading.²³ Consequently, the circuit court enjoined the State from requiring individuals who chose to vote under the second option to execute the affidavit as proscribed by the statute.²⁴ Additionally, the circuit court enjoined the State from disseminating materials indicating that photo identification is required to vote.²⁵ The State appealed the circuit court's order to the Supreme Court of Missouri, which affirmed the circuit court's decision.²⁶

III. LEGAL BACKGROUND

Thirty-six states now have laws requesting or requiring voters to show some form of identification at the polls, thirty-five of which were effective for the 2020 election.²⁷ The specific requirements of these laws vary from state to state but can be grouped by two main distinctions: photo versus non-photo requirements and "strict" versus "non-strict" laws.²⁸ While some states accept only government issued photo IDs as proper identification to vote, other states accept more "relaxed" forms of identification, such as a bank statement or utility bill.²⁹ Under "strict" voter ID laws, voters who lack the required identification will be provided a provisional ballot that will only be counted if they return with proper identification.³⁰ In contrast, "non-strict" laws provide other ways for voters without the required identification to receive a regular

19. WEST COUNTY COMMUNITY ACTION NETWORK, <https://www.wecanstl.org/our-community> [<https://perma.cc/T9TG-DYZY>] (last visited Jan. 27, 2020).

20. *Priorities USA v. State*, 591 S.W.3d 448, 451 (Mo. 2020) (en banc).

21. *Id.*

22. *Id.* at 452.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* at 451–52.

27. *Voter Identification Requirements*, NAT'L CONF. OF STATE LEGISLATURES (Aug. 25, 2020), <https://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx> [<https://perma.cc/9429-WUXP>].

28. *Id.*

29. *Id.*

30. *Id.*

ballot, such as signing an affidavit of identity or having a poll worker vouch for their identity.³¹

These laws have been the subject of much public debate.³² Proponents of voter ID laws advocate for their use as necessary for combatting voter fraud.³³ However, the type of voter fraud intended to be prevented by voter ID laws – in-person voter fraud – is exceedingly rare.³⁴ Former U.S. attorney David Iglesias described voter fraud allegations as “the boogeymen parents use to scare their children . . . [i]t’s very frightening, and it doesn’t exist.”³⁵ One notable nationwide study found only thirty-one possible incidents of in-person voter fraud, comprised of approximately 241 fraudulent ballots out of one billion total ballots cast over a period of fourteen years.³⁶

Critics of voter ID laws argue that they make it harder for certain citizens to vote.³⁷ In particular, strict photo voter ID laws tend to impose a burden on a large number of people, with eleven percent of voting-age citizens lacking necessary photo IDs.³⁸ Many people who do not already have sufficient IDs may face economic and logistical burdens in obtaining them.³⁹ For example, even in states that issue free IDs, obtaining the necessary documents to receive an ID – such as a birth certificate – can cost up to twenty-five dollars.⁴⁰ This cost has been described by some as “‘another form’ of poll tax.”⁴¹

Even those who can bear the costs of obtaining these documents can still face administrative hurdles that seem insurmountable.⁴² Elizabeth Gholar moved from Louisiana to Texas after the state implemented a voter ID law and faced difficulties obtaining a proper Texas ID because a midwife had

31. *Id.*

32. Caroline Williamson et. al., *Election Law Violations*, 56 AM. CRIM. L. REV. 711, 752 (2019).

33. *Id.*

34. Philip Bump, *Here’s How Rare In-Person Voter Fraud Is*, THE WASH. POST (Aug. 3, 2016 2:41 P.M.) <https://www.washingtonpost.com/news/the-fix/wp/2016/08/03/heres-how-rare-in-person-voter-fraud-is/> [<https://perma.cc/T4AD-N9QS>].

35. ARI BERMAN, *GIVE US THE BALLOT: THE MODERN STRUGGLE FOR VOTING RIGHTS IN AMERICA* 230–31 (2015). Iglesias was allegedly fired by the Bush administration from his position at U.S. attorney for New Mexico due to his refusal to bring voter fraud cases that he deemed to lack sufficient evidence. *Id.*

36. Bump, *supra* note 34.

37. Williamson et. al, *supra* note 32, at 752.

38. Suevon Lee & Sarah Smith, *Everything You’ve Ever Wanted to Know About Voter ID Laws*, PROPUBLICA (Mar. 9, 2016, 8:33 AM), <https://www.propublica.org/article/everything-youve-ever-wanted-to-know-about-voter-id-laws> [<https://perma.cc/XL5W-L5N3>].

39. *Id.*

40. *Id.*

41. BERMAN, *supra* note 35, at 307.

42. *Id.* at 306–07.

improperly filled out her birth certificate decades earlier.⁴³ Another Texas resident, Margarito Lara, spent over a decade attempting to get his birth certificate because he had been born at home with no record of his birth.⁴⁴ Even individuals with the necessary documentation can face barriers when trying to actually obtain an ID.⁴⁵ One individual in Alabama stated that her nearest DMV is open only one day per month and that she lacked public transportation to make the forty-mile roundtrip to the next closest DMV.⁴⁶

Many critics also argue that strict voter ID laws have a discriminatory effect.⁴⁷ Former Attorney General Eric Holder, Representative John Lewis, and others have drawn comparisons between voter ID laws and traditional attempts to suppress black voters, such as poll taxes.⁴⁸ Some commentators have argued that strict voter ID requirements reduce turnout among poor, black, elderly, disabled, and minority-language voters who are more likely to lack the type of identification required by the laws.⁴⁹ “Nationally, up to 25% of African-American citizens of voting age lack government-issued photo ID, compared to only 8% of whites.”⁵⁰ One 2018 study also found that 57% of transgender people who have transitioned in states with strict voter ID laws may lack necessary identification or documentation accurately reflecting their gender.⁵¹ There have been additional concerns about laws being written in a discriminatory manner, such as allowing voters to use concealed weapons permits but not student IDs.⁵² Concerns about the discriminatory intent and impact of these laws are exacerbated by some disturbing comments made by their proponents. Sue Burmeister, who introduced the country’s first strict voter ID law in Georgia in 2004, stated, “if there are fewer black voters because of the bill, it will only be because there is less opportunity for fraud” and that “when black voters in her precinct are not paid to vote, they do not

43. *Id.*

44. *Id.* at 307.

45. Lee & Smith, *supra* note 38.

46. *Id.*

47. See, e.g., Richard Sobel & Robert Ellis Smith, *Voter-ID Laws Discourage Participation, Particularly among Minorities, and Trigger a Constitutional Remedy in Lost Representation*, 42 POLITICAL SCIENCE & POLITICS 107, 107–10 (2009).

48. Lee & Smith, *supra* note 38; BERMAN, *supra* note 35, at 223. For a fuller discussion of voter ID laws in the greater context of the voting rights movement, see BERMAN, *supra* note 35.

49. Sobel & Smith, *supra* note 47, at 107.

50. *Oppose Voter ID Legislation - Fact Sheet*, ACLU, <https://www.aclu.org/other/oppose-voter-id-legislation-fact-sheet> [<https://perma.cc/7NQT-GHHL>] (last visited Mar. 23, 2020)

51. Jody L. Herman and Taylor N.T. Brown, *Impact of Strict Voter ID Laws on Transgender Voters in 2018 General Election*, THE WILLIAMS INSTITUTE AT UCLA SCHOOL OF LAW (Aug. 2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Voter-ID-Aug-2018.pdf> [<https://perma.cc/ABA2-WY73>].

52. ACLU, *supra* note 50.

go to the polls.”⁵³ Debbie Riddle defended her proposed voter ID bill in Texas by recounting her experience witnessing a Latina woman receiving assistance at a polling place because she could not speak English.⁵⁴

Additionally, many critics have charged efforts to enact with having partisan motivations.⁵⁵ In 2012, one Pennsylvania House Republican stated that the state’s recently enacted voter ID law would “allow” Mitt Romney to win the state in that year’s presidential election.⁵⁶ After the election, the Pennsylvania Republican Party chairman stated his belief that the state’s voter ID law had “helped a bit” in lowering President Obama’s margin of victory.⁵⁷ That same year, one of Governor Romney’s own political consultants acknowledged that voter ID laws could be one of the ways to help Republican candidates win.⁵⁸ In 2016, Representative Glenn Grothman, a Republican of Wisconsin, stated his belief that the state’s photo ID law would weaken Hillary Clinton’s chances of winning the state in that year’s election.⁵⁹ Other former Republican officials have echoed these sentiments.⁶⁰ Voter ID laws have at times been paired with other measures that tend to restrict access to

53. Recommendation Memorandum from Robert Beriman, et al. on Act No. 53 (H.B. 244) (Aug. 25, 2005) https://www.washingtonpost.com/wp-srv/politics/documents/dojgdocs1_11.pdf [<https://perma.cc/ST6E-G9JM>].

54. Zachary Roth, *Wave of Voter Suppression Measures Targets Latinos*, MSNBC (Mar. 27, 2013), <http://www.msnbc.com/politicsnation/wave-voter-suppression-measures-targets-la> [<https://perma.cc/VS38-ABCK>].

55. See, e.g., Danny Hakim and Michael Wines, ‘*They Don’t Really Want Us to Vote*’: How Republicans Made It Harder, N.Y. TIMES (Nov. 3, 2018), <https://www.nytimes.com/2018/11/03/us/politics/voting-suppression-elections.html> [<https://perma.cc/YKU7-E6UA>].

56. Mackenzie Weinger, *Pa. Pol: Voter ID Helps GOP Win State*, POLITICO (June 25, 2012, 4:26 PM), <https://www.politico.com/story/2012/06/pa-pol-voter-id-helps-gop-win-state-077811> [<https://perma.cc/UC5P-F5DB>].

57. Michael Wines, *Some Republicans Acknowledge Leveraging Voter ID Laws for Political Gain*, N.Y. TIMES (Sept. 16, 2016), <https://www.nytimes.com/2016/09/17/us/some-republicans-acknowledge-leveraging-voter-id-laws-for-political-gain.html> [<https://perma.cc/N5DN-9SM8>].

58. *Id.*

59. *Id.*

60. A North Carolina Republican Party county precinct chairman told an interviewer for “The Daily Show” that the state’s voter ID law would “kick the Democrats in the butt” before later resigning. *Id.* One staff aide to a Wisconsin Republican state legislator attributed his decision to quit his job and leave the party to what he witnessed at a Republican caucus meeting, stating, “A handful of the GOP Senators were giddy about the ramifications and literally singled out the prospects of suppressing minority and college voters.” *Id.* A former Florida Republican Party chairman along with former Florida Republican governor Charlie Crist stated that the state’s voter ID law was devised to suppress Democratic votes. *Id.*

voting, such as reducing the timeframe for early voting.⁶¹ Most of these voting restrictions have been imposed by Republican officials.⁶² One of the best predictors of states adopting voter ID laws is when control of the governor's office and state legislature switches from Democrat to Republican.⁶³

There are empirical data showing that some of these concerns about voter ID laws have come to fruition. While some studies assessing the actual impact of these laws have found evidence of declines in overall voter turnout, the aggregate results of studies thus far have been mixed.⁶⁴ The disenfranchising impact of voter ID laws may depend on successful efforts to notify and inform the voters that are likely to be affected.⁶⁵ Some studies have also argued that findings of no relationship between strict voter ID laws and turnout may be the result of the disenfranchising impact of voter ID laws being masked by other factors, such as voter mobilization in response to these laws.⁶⁶ Several studies have shown that voter ID laws do have a disparate effect on minority communities and elderly voters.⁶⁷ Additionally, a 2012 analysis by statistician and reporter Nate Silver found that voter ID laws tended to cause a shift towards Republican candidates between 0.4% and 1.2%.⁶⁸ Despite all of these concerns and the data supporting them, states

61. See, e.g., Aaron Blake, *North Carolina Governor Signs Extensive Voter ID Law*, THE WASH. POST (Aug. 12, 2013, 1:35 PM), <https://www.washingtonpost.com/news/post-politics/wp/2013/08/12/north-carolina-governor-signs-extensive-voter-id-law/> [<https://perma.cc/K72K-2K7Y>].

62. Hakim and Wines, *supra* note 55.

63. Daniel R. Biggers & Michael J. Hanmer, *Understanding the Adoption of Voter Identification Laws in the American States*, 45 AM. POL. RSCH. 560, 562 (2017).

64. U.S. GOV'T ACCOUNTABILITY OFF., GAO-14-634, ELECTIONS: ISSUES RELATED TO STATE VOTER IDENTIFICATION LAWS 34 (reissued Feb. 27, 2015), <https://www.gao.gov/products/GAO-14-634> [<https://perma.cc/E43Y-J7SZ>].

65. See, e.g., Daniel J. Hopkins, et. al., *Voting But for the Law: Evidence from Virginia on Photo Identification Requirements*, 14 J. OF EMPIRICAL LEGAL STUD. 79 (2017).

66. See, e.g., Nicholas A. Valentino & Fabian G. Neuner, *Why the Sky Didn't Fall: Mobilizing Anger in Reaction to Voter ID Laws*, 38 POL. PSYCH. 331 (2016).

67. See Dan Hopkins, *What We Know About Voter ID Laws*, FIVETHIRTYEIGHT (Aug. 21, 2018, 7:07 AM), <https://fivethirtyeight.com/features/what-we-know-about-voter-id-laws/> [<https://perma.cc/F2JZ-9XUL>] (compiling and summarizing academic studies relating to voter ID measures and race).

68. Nate Silver, *Measuring the Effects of Voter Identification Laws*, FIVETHIRTYEIGHT (Jul. 15, 2012, 9:28 AM), <https://fivethirtyeight.com/features/measuring-the-effects-of-voter-identification-laws/> [<https://perma.cc/75R5-9GEZ>].

have continued to enact voter ID laws across the country, including multiple attempts to enact such laws in Missouri.⁶⁹

A. Legal Battles Over Voter ID Laws

It is important to note that while the Fifteenth, Nineteenth, and Twenty-sixth Amendments prevent states from denying the right to vote based on race, color, prior status as a slave, sex, or age (for anyone eighteen or older), nowhere in the United States Constitution specifically guarantees the right to vote.⁷⁰ In 1875, the United States Supreme Court stated that “the Constitution of the United States has not conferred the right of suffrage upon any one.”⁷¹ But just eleven years later in *Yick Wo v. Hopkins*, the Court expressed in dicta that the “political franchise of voting” is “regarded as a fundamental political right, because [it is] preservative of all rights.”⁷² The Court reiterated that belief nearly eight decades later in *Reynolds v. Sims*, stating that “the right of suffrage is a fundamental matter in a free and democratic society.”⁷³

In 1959 in *Lassiter v. Northampton County Board of Elections*, the Court expressly held that “while the right of suffrage is established and guaranteed by the Constitution it is subject to the imposition of state standards which are not discriminatory and which do not contravene any restriction that Congress acting pursuant to its constitutional powers.”⁷⁴ Seven years later in *Harper v. Virginia State Board of Elections*, the Court clarified that while Article I, Section 2 of the Constitution⁷⁵ confers the right to vote in federal elections, the Constitution does not expressly mention the right to vote in state elections.⁷⁶ However, the Court noted that, under the Equal Protection Clause of the Fourteenth Amendment, “the right of suffrage ‘is subject to the imposition of state standards which are not discriminatory and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed.’”⁷⁷ The Court held that, as a fundamental right,

69. BRENNAN CTR. FOR JUST., *New Voting Restrictions in America* (updated Nov. 18, 2019), <https://www.brennancenter.org/sites/default/files/2019-11/New%20Voting%20Restrictions.pdf> [<https://perma.cc/3JFQ-FSNX>].

70. U.S. CONST. amend. XV, XIX, XXVI.

71. *United States v. Cruikshank*, 92 U.S. 542, 543 (1875).

72. 118 U.S. 356, 370 (1886).

73. 377 U.S. 533, 561–62 (1964).

74. *Lassiter v. Northampton Cty. Bd. of Elections*, 360 U.S. 45, 51 (1959) (internal citations omitted).

75. It reads, in relevant part “The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.” U.S. CONST. art. I, § 2, cl. 1.

76. 383 U.S. 663, 665 (1966).

77. *Id.* (quoting *Lassiter v. Northampton County Board of Elections*, 360 U.S. 45, 51 (1959)).

classifications which invade or restrain the right to vote should be subject to strict scrutiny.⁷⁸

In *Harper*, the Court struck down a Virginia poll tax, concluding that a state violates the Equal Protection Clause whenever it “invidiously discriminate[s]” against voters by “mak[ing] the affluence of the voter or payment of any fee an electoral standard.”⁷⁹ The Court ruled that the Fourteenth Amendment “bars a system which excludes those unable to pay a fee to vote or who fail to pay” from voting.⁸⁰ Three years later in *Kramer v. Union Free School District*, the Supreme Court struck down another voting restriction under the Equal Protection Clause.⁸¹ In that case, the Court found that a New York law that limited voting in school board elections to persons who either owned or leased property in the district or had children attending schools in the district was not sufficiently narrowly tailored to serve its interest of limiting voting to interested persons.⁸²

In 1983, the Court signaled a shift in the standards of review for laws burdening the right to vote in *Anderson v. Celebrezze*.⁸³ In that case, the Court struck down Ohio’s early filing deadlines for independent presidential candidates for placing an unconstitutional restriction on voting rights.⁸⁴ But the Court did so without applying strict scrutiny, noting that “[a]lthough these rights of voters are fundamental, not all restrictions imposed by the States . . . impose constitutionally-suspect burdens on voters’ rights . . .”⁸⁵ Instead, the Court applied a balancing test, stating that the “character and magnitude” of the asserted burden on the right to vote must be weighed against the “precise interests put forward by the State” as justifications for that burden, taking into consideration whether those interests make it necessary to burden the plaintiff’s rights.⁸⁶

Nearly a decade later, the Court further refined this approach in *Burdick v. Takushi*.⁸⁷ There, the Court specifically declared that not all laws that place a burden on the right to vote are subject to strict scrutiny.⁸⁸ The Court reiterated the balancing test laid out in *Anderson* and explained that under this standard, voting regulations should only be subject to strict scrutiny when they

78. *Id.* at 670. Harper actually states that the classifications must be “closely scrutinized”, but the Court has since interpreted this to mean that strict scrutiny should be applied. *See, e.g., Plyler v. Doe*, 457 U.S. 202, 233 (1982).

79. *Id.* at 666.

80. *Id.* at 668.

81. *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 633 (1969).

82. *Id.* at 623, 633.

83. *See* 46 U.S. 780 (1983).

84. *Id.* at 805–06.

85. *Id.* at 788.

86. *Id.* at 789.

87. *See* 504 U.S. 428 (1992).

88. *Burdick v. Takushi*, 504 U.S. 428, 433 (1992).

impose “severe” restrictions on the right to vote.⁸⁹ The Court further held that when regulations that impose only “reasonable, nondiscriminatory” restrictions on the right to vote, those restrictions will generally be justified by the State’s important regulatory restrictions.⁹⁰ Under that standard, the Court upheld Hawaii’s prohibition on write-in voting.⁹¹ Together, the principles from these two cases have come to be known as the “*Anderson-Burdick*” balancing test, which has since been applied as an intermediate standard of review for state voting laws.⁹²

In 2008, the United States Supreme Court heard a challenge to a strict voter ID statute in Indiana requiring voters to present government-issued photo identification to cast a ballot in *Crawford v. Marion County Election Board*.⁹³ The statute in question allowed voters who possessed the necessary ID but could not present them at the time of voting to cast a provisional ballot that would be counted if the voter presented the ID to the circuit clerk’s office within ten days of casting the ballot.⁹⁴ The law also allowed indigent voters and voters with religious objections to being photographed to cast a provisional ballot that would be counted if the voter executed an affidavit before the circuit clerk within ten days of casting the ballot.⁹⁵ The Indiana Democratic Party and others filed suit seeking a judgment declaring the law invalid and enjoining its enforcement because it violated the right to vote protected by the Fourteenth Amendment.⁹⁶

Over the dissent of the three Democratic-appointed justices, the six Republican-appointed justices voted to uphold the statute.⁹⁷ Justice Stevens authored a plurality opinion joined by Chief Justice Roberts and Justice Kennedy.⁹⁸ Stevens cited the approach first laid out in *Anderson* and engaged in a balancing of interests, comparing Indiana’s legitimate state interests in

89. *Id.* at 434.

90. *Id.*

91. *Id.* at 441–42.

92. Emily Vincent Cox, *A Most Precious Right: Equal Protection, Voter Photo Identification, and the Battle Brewing in Texas*, 51 GA. L. REV. 235, 243 (2016).

93. 553 U.S. 181 (2008).

94. *Id.* at 186.

95. *Id.*

96. *Id.* at 186–87.

97. *Id.* at 184, 209, 237.

98. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 185 (2008); It is worth noting that years later after retiring from the Court, Justice Stevens expressed doubts as to whether the case was rightly decided. Robert Barnes, *Stevens says Supreme Court decision on voter ID was correct, but maybe not right*, WASH. POST (May 15, 2016), https://www.washingtonpost.com/politics/courts_law/stevens-says-supreme-court-decision-on-voter-id-was-correct-but-maybe-not-right/2016/05/15/9683c51c-193f-11e6-9e16-2e5a123aac62_story.html [https://perma.cc/55GK-LH6S].

imposing the law with the burden the law imposed on voters.⁹⁹ The Court determined that the state had legitimate interests in improving and modernizing election procedures, preventing voter fraud, and safeguarding voter confidence.¹⁰⁰ But the plurality acknowledged that the record contained no evidence of in-person voter fraud targeted by the law actually occurring in Indiana at any time in its history.¹⁰¹

In examining the burdens of the law, the plurality noted that photo ID requirements impose burdens that other voter identification methods do not.¹⁰² However, the plurality concluded that the burden placed on voters who did not possess a proper ID was unlike a poll-tax because the state would provide such identification to those who lacked it free of charge.¹⁰³ The plurality also determined that requirements to obtain a photo ID such as assembling the required documents, traveling to the license office, and posing for a photograph did not qualify as a substantial burden on the right to vote, “or even represent a significant increase over the usual burdens of voting.”¹⁰⁴ Finally, the plurality noted that while the law might place a slightly heavier burden on certain groups of people, such as the elderly and people of limited economic means, the severity of that burden was mitigated by the option of casting a provisional ballot.¹⁰⁵

Ultimately, the plurality decided that it could not conclude that the statute imposed a high enough burden on any class of voters to overcome the clear interests put forward by the State.¹⁰⁶ Additionally, the plurality rejected the appellants’ argument that the law was invalid for being politically motivated due to the fact that Republicans in the General Assembly were unanimous in supporting the legislation and Democrats were unanimous in opposing it.¹⁰⁷ The plurality ruled that “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.”¹⁰⁸

Justice Scalia authored an opinion concurring in the judgment, which was joined by Justices Thomas and Alito.¹⁰⁹ Scalia also referenced the balancing test set out in *Anderson* and *Burdick* but argued that the lead opinion

99. *Id.* at 190 (citing *Anderson v. Celebrezze*, 460 U.S. 780 (1983)).

100. *Id.* at 191.

101. *Id.* at 194.

102. *Id.* at 197.

103. *Id.* at 198.

104. *Id.*

105. *Id.* at 199.

106. *Id.* at 202–03.

107. *Id.* at 203–04.

108. *Id.* at 204.

109. *Id.*

was incorrect in its analysis of the burden imposed by the voter ID law.¹¹⁰ He argued that because the law is generally applicable and nondiscriminatory, the Court should only examine the burden places on voters generally rather than the different burdens faced by some particular individual voters.¹¹¹ Scalia concluded that the requirement of obtaining the proper identification to vote imposed a minimal burden on the population as a whole that was justified by the State's interests.¹¹²

Justice Souter authored a dissent, which was joined by Justice Ginsburg.¹¹³ Souter argued that Indiana did not make a particular, factual showing that threats to its interests outweighed the burdens it imposed on the right to vote for certain groups of Indiana voters.¹¹⁴ In contrast to Stevens, Souter argued that it could be quite difficult for certain people to obtain the necessary ID, noting that poor, old, and disabled voters without a car may find the trip to a licensing office prohibitive, as evidenced by the fact that Indiana has far fewer license branches than voting precincts in each county and limited public transportation.¹¹⁵ Additionally, Souter noted that voters who can afford the round trip to the license office face additional financial hurdles in obtaining the documents necessary to acquire an ID, with birth certificates costing from \$3 to \$12, or more, and passports costing up to \$100.¹¹⁶ Souter asserted that, while these travel costs and fees are "far from shocking on their face," they are "disproportionately heavy for, and thus disproportionately likely to deter, the poor, the old, and the immobile."¹¹⁷

Justice Breyer authored a separate dissent, also arguing that the law is unconstitutional because it imposes a disproportionate burden on voters lacking the necessary identification to vote.¹¹⁸ Breyer noted that the Indiana law was significantly more restrictive than voter ID laws imposed in other states that either allowed for a broader range of permissible identification, made it easier for provisional ballots to be counted, or lowered the barriers to obtaining the necessary identification.¹¹⁹

Unlike the United States Constitution, all fifty state constitutions explicitly guarantee the right to vote.¹²⁰ While the United States Supreme Court found strict voter ID laws to be constitutionally permissible, state courts in Missouri, Pennsylvania, and Arkansas have found that such laws violate

110. *Id.* at 204–09 (citing *Burdick v. Takushi*, 504 U.S. 428 (1992); *Anderson v. Celebrezze*, 460 U.S. 780 (1983)).

111. *Id.*

112. *Id.* at 209.

113. *Id.* at 209.

114. *Id.* (Souter, J., dissenting).

115. *Id.* at 211–14.

116. *Id.* at 215–16.

117. *Id.* at 216.

118. *Id.* at 237.

119. *Id.* at 239–41.

120. Joshua A. Douglas, *The Right to Vote Under State Constitutions*, 67 VAND. L. REV. 89, 101 (2014).

their own state constitutions.¹²¹ However, similar challenges have been unsuccessful in Tennessee and Georgia.¹²²

The issue of voter ID laws was also indirectly impacted by the Supreme Court's decision in *Shelby County v. Holder*.¹²³ In that case, Alabama's Shelby County sought a declaratory judgment deeming the coverage formula contained in Section 4 of the Voting Rights Act of 1965, as well as Section 5's preclearance requirement, unconstitutional.¹²⁴ Section 5 requires certain jurisdictions deemed to have engaged or attempted to engage in egregious voting discrimination to get approval referred to as "preclearance" from specific federal authorities before implementing any change in voting procedures.¹²⁵ Section 4 established the "coverage formula" used to determine which jurisdictions are covered by Section 5 and thus required to undertake the preclearance procedure.¹²⁶ While initially set to expire after five years, the coverage formula had been repeatedly reauthorized by Congress without any major changes prior to *Shelby*.¹²⁷

In a five-to-four vote split along ideological lines, the Supreme Court held that the Section 4 coverage formula was unconstitutional for being "based on decades-old data and eradicated practices" that were no longer "sufficiently related to the problem that it targets."¹²⁸ But the Court issued no ruling on Section 5, leaving the door open for Congress to establish an updated coverage formula based on current statistics and thus subjecting jurisdictions that meet those characteristics to the preclearance requirement.¹²⁹ Thus far, Congressional attempts to do so have been unsuccessful, breaking down on partisan lines.¹³⁰ In her *Shelby* dissent, Justice Ginsburg famously argued that "[t]hrowing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet."¹³¹ Sure enough, soon after the Court's decision, Texas, North Carolina, Alabama, and Mississippi began to

121. See *Weinschenk v. State*, 203 S.W.3d 201, 221–22 (Mo. 2006); see also *Applewhite v. Com.*, No. 330 M.D. 2012, 2014 WL 184988 at *26 (Pa. Commw. Jan. 17, 2014); *Martin v. Kohls*, 444 S.W.3d 844, 852–53 (Ark. 2014).

122. See *Memphis, City of v. Hargett*, 414 S.W.3d 88, 111 (Tenn. 2013); see also *Democratic Party of Ga., Inc. v. Perdue*, 707 S.E.2d 67, 75 (Ga. 2011).

123. See Noah R. Feldman & Kathleen M. Sullivan, *CONSTITUTIONAL LAW* 913 (12th ed. 2019); see also *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, n.5 (2013).

124. *Shelby Cnty.*, 570 U.S. at 540–41.

125. 52 U.S.C. § 10304(a) (2018).

126. § 10304(b) (2018) (*invalidated by Shelby Cnty., Ala. v. Holder*, 570 U.S. 529 (2013)).

127. *Shelby Cnty.*, 570 U.S. at 529.

128. *Id.* at 550–51 (quoting *N.W. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 203 (2009)).

129. *Shelby Cnty.*, 570 U.S. at 557.

130. Feldman and Sullivan, *supra* note 123, at 913.

131. *Shelby Cnty.*, 570 U.S. at 590.

implement the type of strict voter ID laws that had previously been stalled at preclearance.¹³²

B. Voter ID Laws in Missouri

Like some other states, Missouri provides voting rights protections beyond those provided by the United States Constitution.¹³³ Article 1, Section 25 of the Missouri Constitution provides that “all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”¹³⁴ Additionally, Article 8, Section 2 provides that “All citizens of the United States . . . over the age of eighteen who are residents of this state and of the political subdivision in which they offer to vote are entitled to vote in all elections by the people, if . . . they are registered within the time prescribed by law.”¹³⁵

In 2002, the Missouri legislature created a non-strict, non-photo voter identification requirement.¹³⁶ The law allowed voters to identify themselves using a Missouri-issued ID, a federally-issued ID, a student ID, a driver’s license or state ID issued by another state, a copy of a current utility bill, bank statement, government check, paycheck or other government document that contains the name and address of the voter, personal knowledge of the voter by two supervising election judges (one from each major political party),¹³⁷ or other identification approved by the secretary of state or federal law.¹³⁸ In 2006, Missouri enacted a statute altering these requirements by limiting the acceptable forms of identification to a Missouri driver’s license, a Missouri non-driver’s license, or some other form of photo identification with an expiration date issued by the United States or State of Missouri.¹³⁹ The law also provided a mechanism for waiving the photo ID requirement for certain classes of people and allowed them to cast a provisional ballot by signing an affidavit swearing that the reason they have no acceptable photo ID is that they are unable to obtain such identification because of a disability, handicap,

132. Feldman and Sullivan, *supra* note 123, at 913.

133. *See* MO. CONST. art. I, § 25; MO. CONST. art. VIII, § 2.

134. MO. CONST. art. I, § 25.

135. MO. CONST. art. VIII, § 2.

136. S.B. 675, 91st Gen. Assemb., 2d Reg. Sess. (Mo. 2002); MO. REV. STAT. § 115.427 (2002) (*invalidated by* Weinschenk v. State, 203 S.W.3d 201 (Mo. 2006)).

137. This option required completion of a secretary of state-approved affidavit signed by both supervisory election judges and voter that attestation to the personal knowledge of the voter by the two supervisory election judges. S.B. 675, 91st Gen. Assemb., 2d Reg. Sess. (Mo. 2002); MO. REV. STAT. § 115.427 (2002).

138. S.B. 675, 91st Gen. Assemb., 2d Reg. Sess. (Mo. 2002); MO. REV. STAT. § 115.427 (2002).

139. S.B. 1014, 93rd Gen. Assemb., 2d Reg. Sess. (Mo. 2006); MO. REV. STAT. § 115.427 (2006).

or sincerely held religious belief, or because they were born on or before 1941.¹⁴⁰

That same year, Kathleen Weinschenk and other plaintiffs sued the State to prevent enforcement of this statute on the grounds that it interfered with the fundamental right to vote guaranteed by the Missouri and United States constitutions.¹⁴¹ The plaintiffs argued that the law required them and other voters to spend money to obtain the necessary documents to acquire a proper ID, a burden that was particularly high for low-income, disabled, and elderly voters.¹⁴² After the trial court found the law unconstitutional for violating Missourians' rights to vote and to equal protection of the laws, the State appealed to the Supreme Court of Missouri.¹⁴³ The court heard this challenge in *Weinschenk v. State*.¹⁴⁴

In a *per curiam* opinion, the court found that Article 1, Section 25 and Article 8, Section 2 of the Missouri Constitution “establish with unmistakable clarity that the right to vote is fundamental to Missouri citizens” and that “voting rights are an area where [the Missouri] [C]onstitution provides greater protection than its federal counterpart.”¹⁴⁵ Determining that the requirements to pay money, exhaust time, and navigate bureaucracies in order to vote represent “a heavy and substantial burden on Missourians’ free exercise of the right of suffrage,” the court subjected the law to strict scrutiny review.¹⁴⁶ Under that analysis, the court found that while the State had a substantial interest in combatting both voter fraud and perceptions of voter fraud, the photo ID requirement was not “necessary or narrowly tailored to accomplish [those] interests.”¹⁴⁷ As a result, the court held that the photo ID requirement violated the equal protection clause of the Missouri Constitution.¹⁴⁸

In its analysis, the court noted that the law did not allow voters to cast provisional ballots when they lacked the money to “undertake the sometimes laborious process of obtaining a proper photo ID.”¹⁴⁹ The court also noted that the provision allowing Missourians to obtain an acceptable ID without cost was undercut by the fact that federal law requires citizens to present a valid passport or birth certificate to obtain one and obtaining those documents induces costs ranging from \$5 to \$236 or more for foreign-born citizens.¹⁵⁰ Further, the court noted that the additional documentation required for voters

140. S.B. 1014, 93rd Gen. Assemb., 2d Reg. Sess. (Mo. 2006); MO. REV. STAT. § 115.427 (2006).

141. *Weinschenk v. State*, 203 S.W.3d 201, 204 (Mo. 2006).

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.* at 211–12.

146. *Id.* at 212–15.

147. *Id.* at 215–19.

148. *Id.* at 219 (citing MO. CONST. art. I, § 2).

149. *Id.* at 206.

150. *Id.* at 207–08.

who have changed their names adds even more expense.¹⁵¹ Additionally, the court noted that acquiring an ID imposed potentially highly time-consuming practical costs on top of the monetary costs, “including navigating state and/or federal bureaucracies, and travel to and from the Department of Revenue and other government agencies.”¹⁵² The court discussed evidence on the record of real Missouri voters facing some of these obstacles.¹⁵³ The court also examined testimony from Missouri officials and other evidence supporting the notion that voter impersonation, which would theoretically be thwarted by photo ID requirements, was not an issue in Missouri.¹⁵⁴

In the wake of the *Weinschenk* decision, the legislature spent years exploring ways to change Missouri voter identification requirements.¹⁵⁵ These measures were promoted by Republican lawmakers and repeatedly fought by Democrats.¹⁵⁶ Each year from 2007 to 2014, the Missouri House of Representatives passed a voter ID bill that subsequently died in the Senate.¹⁵⁷ A 2011 bill passed both houses but was vetoed by Governor Jay Nixon, a Democrat.¹⁵⁸ Republicans attempted to pass a constitutional amendment in 2012, but that attempt was deemed unconstitutional and excluded from the ballot by a Cole County Judge.¹⁵⁹ Finally, in 2016, Missouri Republicans successfully put a proposed constitutional amendment on the November ballot to allow lawmakers to create requirements for voters to identify themselves when voting at their polling place, including using

151. *Id.* at 208.

152. *Id.*

153. *Id.* at 209.

154. *Id.* at 209–10.

155. See Reid Wilson, *Missouri Likely to Pass Voter ID Bill This Year*, WASH. POST (Jan. 31, 2014, 6:00 AM), <http://www.washingtonpost.com/blogs/govbeat/wp/2014/01/31/missouri-likely-to-pass-voter-id-bill-this-year/> [https://perma.cc/L8JP-E3M5]; David A. Graham, *The Voter-ID Fight in Missouri*, THE ATLANTIC (Apr. 29, 2016), <https://www.theatlantic.com/politics/archive/2016/04/missouri-voter-id-fight/480450/> [https://perma.cc/DBD5-2HEX].

156. Graham, *supra* note 155.

157. See Wilson, *supra* note 155.

158. Graham, *supra* note 155.

159. *Id.*; Jason Hancock, *Court Strikes Down Proposed Missouri Voter ID Amendment*, KC STAR (Mar. 29, 2012, 5:00 AM), <https://www.kansascity.com/news/local/article302001/Court-strikes-down-proposed-Missouri-voter-ID-amendment.html>. Judge Pat Joyce ruled that the summary that would have appeared on the ballot was “insufficient and unfair” because it included the phrase “Voter Protection Act,” which did not appear in the actual amendment and because it stated that the amendment would allow the General Assembly to establish an early voting period while the amendment would have actually reduced the permitted time period for early voting. *Id.*

photo IDs.¹⁶⁰ Missouri voters ultimately approved the amendment.¹⁶¹ As a result, Missouri enacted the voter ID legislation at issue in *Priorities USA*.¹⁶²

IV. INSTANT DECISION

By a five-to-two vote, in an opinion written by Judge Russell, the Supreme Court of Missouri affirmed the judgment of the circuit court, ruling that the circuit court did not err in finding the affidavit requirement of the voter ID law unconstitutional.¹⁶³ Furthermore, the court held that the circuit court did not err in enjoining the State from requiring individuals who vote under the non-photo identification option provided in statute to execute the affidavit and from disseminating materials indicating photo identification is required to vote in Missouri.¹⁶⁴ In a dissenting opinion, Judge Powell did not argue that the affidavit requirement as written in the statute was constitutional, but instead argued that the remedies issued by the court were improper.¹⁶⁵

A. The Majority Opinion

Writing for the majority, Judge Russell noted that two provisions in the Missouri Constitution establish “‘with unmistakable clarity’ that Missouri citizens have a fundamental right to vote.”¹⁶⁶ The first provision, Article I, Section 25, “provides that ‘all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.’”¹⁶⁷ Additionally, Article VIII, Section 2 establishes the necessary qualifications in order to vote in Missouri.¹⁶⁸ The majority further

160. Jack Suntrup, *Voters Will Decide on Photo ID This Year in Missouri*, ST. LOUIS POST DISPATCH (May 12, 2016), https://www.stltoday.com/news/local/govt-and-politics/voters-will-decide-on-voter-photo-id-this-year-in/article_eaf6442a-493a-56bf-b5a0-45d83efdcc25.html [<https://perma.cc/5BZU-QRB8>]; H.J.R. 1014, 98TH GEN. ASSEMB., 2d REG. SESS. (MO. 2016).

161. Kurt Erickson, *Missouri’s Controversial Voter Photo ID Law in Front of State’s Highest Court*, ST. LOUIS POST DISPATCH (Oct. 3, 2019), https://www.stltoday.com/news/local/crime-and-courts/missouri-s-controversial-voter-photo-id-law-in-front-of/article_95f22cf4-2dfb-5599-997e-a12998aef521.html [<https://perma.cc/UB3T-RP4V>].

162. *Id.*; *Priorities USA v. State*, 591 S.W.3d 448, 451 (Mo. 2020) (en banc).

163. *Priorities USA*, 591 S.W.3d at 461.

164. *Id.*

165. *Id.*

166. *Id.* at 452 (quoting *Weinschenk v. State*, 203 S.W.3d 201, 211 (Mo. 2006)).

167. *Id.* (quoting MO. CONST. art. I, § 25).

168. *Id.* (citing MO. CONST. art. VIII, § 2). The provision reads:

All citizens of the United States, including occupants of soldiers’ and sailors’ homes, over the age of eighteen who are residents of this state and of the

noted that the Missouri Constitution guarantees Missouri citizens equal protection of the laws.¹⁶⁹ But the Court acknowledged, as it had previously recognized, that some regulation of the voting process is actually necessary in order to protect the right to vote.¹⁷⁰

After discussing the differences between strict scrutiny and rational basis review, the majority explained that it need not be determined which standard is appropriate for the case because the affidavit requirement was unable to satisfy even rational basis review.¹⁷¹ The court stated that, while verifying a voter's identify and eligibility to vote to prevent voter fraud is a "legitimate – and even compelling" interest,¹⁷² the affidavit requirement set out in the statute was not rationally related to this interest because it was not "a reasonable way of accomplishing this goal."¹⁷³ The provision of the statute allows an individual lacking "an approved form of photo identification"¹⁷⁴ but who is "otherwise qualified to vote" to cast a ballot if that person provides an "approved form of non-photo identification"¹⁷⁵ and executes an affidavit that is "substantially in the following form":¹⁷⁶

I do solemnly swear (or affirm) that my name is; that I reside at; that I am the person listed in the precinct register under this name and at this address; and that, under penalty of perjury, *I do not possess a form of personal identification approved for voting*. As a person who does not possess a form of personal identification approved for voting, I acknowledge that I am eligible to receive free of charge a Missouri

political subdivision in which they offer to vote are entitled to vote at all elections by the people, if the election is one for which registration is required if they are registered within the time prescribed by law, or if the election is one for which registration is not required, if they have been residents of the political subdivision in which they offer to vote for thirty days next preceding the election for which they offer to vote: Provided however, no person who has a guardian of his or her estate or person by reason of mental incapacity, appointed by a court of competent jurisdiction and no person who is involuntarily confined in a mental institution pursuant to an adjudication of a court of competent jurisdiction shall be entitled to vote, and persons convicted of felony, or crime connected with the exercise of the right of suffrage may be excluded by law from voting.

MO. CONST. art. VIII, § 2.

169. *Priorities USA*, 591 S.W.3d at 452 (citing MO. CONST. art. I, § 2). The provision states that "all persons are created equal and are entitled to equal rights and opportunity under the law." MO. CONST. art. I, § 2.

170. *Priorities USA*, 591 S.W.3d at 452–53 (quoting *Weinschenk v. State*, 203 S.W.3d 201, 212 (Mo. 2006)).

171. *Id.* at 453.

172. *Id.* (quoting *Weinschenk v. State*, 203 S.W.3d 201, 217 (Mo. 2006)).

173. *Id.* (quoting *Peters v. Johns*, 489 S.W.3d 262, 273 (Mo. 2016)).

174. *Id.*

175. *Id.* (citing MO. REV. STAT. § 115.427.2(1) (2017)).

176. *Id.* (quoting MO. REV. STAT. § 115.427.3 (2017)).

nondriver's license at any fee office if desiring it in order to vote. *I furthermore acknowledge that I am required to present a form of personal identification, as prescribed by law, in order to vote.*

I understand that knowingly providing false information is a violation of law and subjects me to possible criminal prosecution.¹⁷⁷

The majority explained that the language in the affidavit is misleading, no matter how it is interpreted.¹⁷⁸ If the words “I do not possess form of personal identification approved for voting” in the affidavit refer to any approved photo or non-photo identification, then that language is misleading because individuals voting under this provision of the statute are required to swear under oath that they do not possess such identification but then must present approved non-photo identification in order to vote.¹⁷⁹ However, if the words refer only to approved photo identification, then the sentence later in the affidavit requiring voters to acknowledge they are “required to present a form of personal identification . . . in order to vote” is inaccurate.¹⁸⁰ The court concluded that either interpretation of the language requires individuals voting under that provision to “sign an ambiguous, contradictory statement under oath and subject to the penalty of perjury.”¹⁸¹

The majority further noted that witness testimony highlighted the confusion stemming from the affidavit's contradictory language.¹⁸² In particular, the opinion discussed accounts from two voters who were confused by the language in the affidavit and testified that they would not sign it to vote in a future election.¹⁸³ The opinion also noted accounts of election officials not understanding the affidavit requirement, including one voter who was told she would need photo identification to vote in the next election and another who was not allowed to vote, despite presenting his voter registration card, which is an acceptable form of identification under the statute.¹⁸⁴ Thus, the court concluded that requiring voters to “sign a contradictory, misleading affidavit” is not a reasonable means to accomplish the goal of combatting voter fraud, and therefore “does not pass muster under any level of scrutiny.”¹⁸⁵ As a result, the court affirmed the judgment of the circuit court declaring the affidavit unconstitutional.¹⁸⁶

177. *Id.* at 453–54. (quoting MO. REV. STAT. § 115.427.3 (2017) (emphasis added)).

178. *Id.*

179. *Id.* (quoting MO. REV. STAT. § 115.427.3 (2017)).

180. *Id.* (quoting MO. REV. STAT. § 115.427.2(1) (2017)).

181. *Id.*

182. *Id.*

183. *Id.* at 454–55.

184. *Id.* at 455.

185. *Id.*

186. *Id.*

Next, the Court examined whether enjoining the State from requiring voters to execute the affidavit when voting using approved non-photo identification was a proper remedy.¹⁸⁷ The State argued that the secretary of state should have been allowed to rewrite the affidavit language, or – in the alternative – the court should have severed only the parts of the affidavit deemed unconstitutional and left the rest in place.¹⁸⁸ The majority found both of those remedies to be improper.¹⁸⁹ The court explained that, because the statute required the affidavit to be “substantially” in the form provided in the statute, the secretary would have no authority to alter the problematic language and could not cure the constitutional defect through rewriting the affidavit.¹⁹⁰

The majority next addressed the issue of severability, explaining that “when a portion of a statute is found unconstitutional, the remaining provisions will not be upheld if they are ‘so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one.’”¹⁹¹ In order to determine whether valid parts of the statute can be upheld after stripping away the unconstitutional parts, the court employs a two-part test.¹⁹² The court first determines whether “the remaining portions are in all respects complete and susceptible of constitutional enforcement,” and then determines whether “the remaining statute is one that the legislature would have enacted if it had known that the rescinded portion was invalid.”¹⁹³ The majority concluded that the affidavit requirement failed this test.¹⁹⁴

Because the court found the phrase “form of personal identification” to be misleading as used in the affidavit, both the portion of the affidavit requiring individuals to aver they “do not possess a form of personal identification approved for voting,” as well as the portion requiring voters to acknowledge they are “required to present a form of personal identification, as prescribed by law, in order to vote” would have to be severed, as they were unconstitutional.¹⁹⁵ Additionally, the court found that the portion of the affidavit stating “I acknowledge that I am eligible to receive free of charge a Missouri nondriver’s license at any fee office if desiring it in order to vote,” would also need to be severed for misstating the law, as one of the State’s witnesses testified that not everyone is eligible for a free license.¹⁹⁶ As a result, the remaining language would read:

187. *Id.*

188. *Id.*

189. *Id.* at 455–59.

190. *Id.* at 456.

191. *Id.* (quoting MO. REV. STAT. § 1.140).

192. *Id.* (citing *Dodson v. Ferrara*, 491 S.W.3d 542, 558 (Mo. 2016)).

193. *Id.* (quoting *Dodson v. Ferrara*, 491 S.W.3d 542, 558 (Mo. 2016)).

194. *Id.* at 455.

195. *Id.* at 456–57 (quoting MO. REV. STAT. § 115.427).

196. *Id.* at 457 (quoting MO. REV. STAT. § 115.427).

I do solemnly swear (or affirm) that my name is; that I reside at; that I am the person listed in the precinct register under this name and at this address. I understand that knowingly providing false information is a violation of law and subjects me to possible criminal prosecution.¹⁹⁷

The majority pointed out that the remaining language would be meaningless, as it closely mirrored the language of the precinct register all voters are required to sign in order to establish their identity and qualifications to vote.¹⁹⁸ The register reads “I hereby certify that I am qualified to vote at this election by signing my name and verifying my address by signing my initials next to my address.”¹⁹⁹ Additionally, the register warns that “[i]t is against the law for anyone to vote, or attempt to vote, without having a lawful right to vote.”²⁰⁰ Because of the closeness in language of the provisions, the court found that the legislature would not have enacted this modified version of the affidavit on its own, and thus the rest of the affidavit should not be upheld.²⁰¹

Finally, the court addressed the issue of the injunction against the State from disseminating materials stating that voters will be asked to show a photo identification card without specifying any forms of non-photo identification also allowed by the statute.²⁰² The majority noted that Missouri Revised Statute Section 115.425 assigns the secretary of state with the duty to notify Missouri citizens of voter identification requirements.²⁰³ The advertisement in question promulgated by the secretary of state provided:

Voters: Missouri’s new Voter ID law is now in effect. When you vote, you will be asked for a photo ID. A Missouri driver or nondriver license works but there are other options, too. If you don’t have a photo ID to vote, call 866-868-3245 and we can help.²⁰⁴

197. *See id.*

198. *See id.*

199. MO. REV. STAT. § 115.427(8).

200. *Id.*

201. *Priorities USA*, 591 S.W.3d at 457.

202. *Id.* at 459–60.

203. *Id.* at 460 (citing MO. REV. STAT. § 115.427). The statute provides “The secretary of state shall provide advance notice of the personal identification requirements of subsection 1 of this section in a manner calculated to inform the public generally of the requirement for forms of personal identification as provided in this section. Such advance notice shall include, at a minimum, the use of advertisements and public service announcements in print, broadcast television, radio, and cable television media, as well as the posting of information on the opening pages of the official state internet websites of the secretary of state and governor.” MO. REV. STAT. § 115.425 (2017).

204. *Priorities USA*, 591 S.W.3d at 460.

The majority shared the circuit court's view that this advertisement misled voters into believing they needed photo identification to vote, when, under the statute, this was not the case.²⁰⁵ While the State tried to defend the language as accurate by arguing that voters will be asked to show photo identification, the statute contains no mandate for election officials to ask for photo identification specifically, and the State stated at trial that "all [three] methods of voting are equally valid."²⁰⁶ Thus, the majority found that the advertisement constituted an "inaccurate characterization" of the voter identification requirements.²⁰⁷ The court also found that the injunction issued by the circuit court which was limited in scope to only "materials with the graphic that voters will be asked to show a photo identification card without specifying other forms of identification which voters may also show" was a proper remedy and not an abuse of discretion.²⁰⁸

B. The Dissenting Opinion

In a dissenting opinion, Judge Powell argued that if the affidavit requirement as set forth in the statute was unconstitutional, the court should have severed the non-photo identification option along with the affidavit requirement because the legislature would not have enacted that option without the accompanying affidavit requirement.²⁰⁹ The dissent noted that the affidavit requirement is the sole distinction between the photo identification and non-photo identification provisions in the statute and that the legislature clearly intended to distinguish between the separate voting options.²¹⁰ Additionally, the dissent noted that removing the affidavit requirement without also removing the non-photo identification voting option makes no meaningful change to existing Missouri voter identification laws. Therefore, it should be presumed that the legislature would not have enacted the provision without the affidavit requirement.²¹¹ Judge Powell further argued that the resulting provision would pass muster under both the United States and Missouri constitutions under the decisions of *Crawford v. Marion County Election Board* and *Weinschenk v. State*, respectively.²¹²

Alternatively, Judge Powell argued that the court could have severed only the contradictory affidavit language and left the rest in place.²¹³ The dissent noted that this solution "achieves the legislative goal of promoting

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.* at 460–61.

209. *Id.* at 462 (Powell, J., dissenting).

210. *Id.* at 464.

211. *Id.* at 462.

212. *Id.* at 462–63. *See supra*, Section III for a discussion of these decisions.

213. *Priorities USA v. State*, 591 S.W.3d 448, 463 (Mo. 2020) (en banc) (Powell, J., dissenting).

voting by photo identification while giving eligible registered voters other options to exercise their constitutional right to vote without imposing more than a *de minimis*²¹⁴ burden on their suffrage.²¹⁵ The dissent also noted that this approach would maintain the legislature's intent to create a distinction between photo identification and non-photo identification voting.²¹⁶

Additionally, Judge Powell argued that the State should not have been enjoined from disseminating information about the voter identification requirements.²¹⁷ The dissent argued that the language in the material distributed by the secretary of state “clearly indicates that a voter has other options” and that a “plain reading of the advertisement accurately reflects the law.”²¹⁸ Thus, Judge Powell concluded that the advertisement is not misleading and is instead a “lawful execution of the secretary of state’s statutory duty.”²¹⁹

V. COMMENT

The Court’s decision in *Priorities USA* is a victory for those who are concerned about the disenfranchising impact of voter ID laws, at least in the short term. After the decision, Secretary of State Jay Ashcroft stated that the court had “eviscerated” the voter ID law.²²⁰ With the affidavit provision of the law gone, current voter identification requirements are effectively the same as before the law.²²¹ As of now, Missouri voters may cast a ballot upon providing one of the listed photo or non-photo identification methods provided in the statute.²²² Additionally, the state is currently unable to distribute deceptive information implying that photo IDs are necessary to vote.²²³ The result of this decision is that Missouri voters who lack photo IDs will be able to exercise their constitutional right to vote and will not be discouraged from doing so on the false belief that they lack the necessary identification.

However, the *Priorities USA* decision has little impact on the long-term voter ID requirements in Missouri. The decision leaves the legislature free to enact new legislation based on the 2016 constitutional amendment.²²⁴

214. Too minor to even be considered. “So insignificant that a court may overlook it in deciding an issue or case.” *De Minimis*, BLACK’S LAW DICTIONARY (11th ed. 2019) (West).

215. *Id.*

216. *Id.*

217. *Id.* at 464.

218. *Id.*

219. *Id.*

220. Suntrup, *supra* note 4.

221. *See Priorities USA*, 591 S.W.3d at 461.

222. *Id.*; MO. REV. STAT. § 115.427(1) (2017).

223. *Priorities USA*, 591 S.W.3d at 461.

224. *Id.*

In March of 2020, Missouri House Republicans approved a new plan to bolster Missouri's voter ID requirements over objections from Democrats.²²⁵ The proposed bill would have amended Section 115.427 to provide new requirements for voters to identify themselves.²²⁶ The bill specifically enumerated a nonexpired Missouri driver's license, a nonexpired or nonexpiring Missouri nondriver's license, and a photo ID issued by the Missouri National Guard, United States Armed Forces, or United States Department of Veteran Affairs that is not expired or does not have an expiration date as acceptable forms of identification.²²⁷ It also included a generic clause that allows for the use of a document that: (1) contains the name of the individual to whom the document was issued that substantially conforms to the most recent signature in the individual's voter registration record, (2) shows a photograph of the individual, (3) includes an expiration date and is either not expired or expired after the date of the most recent general election, and (4) was issued by the United States or the state of Missouri.²²⁸ The bill would have allowed voters lacking such identification to cast a provisional ballot upon signing an affidavit stating that they understand their vote will not be counted unless they return to the polling place the same day with a valid ID or their signature matches what is on file with election authorities.²²⁹ Importantly, this bill would no longer have allowed voters to verify their identity with non-photo identification like bank statements or utility bills.²³⁰

Removing non-photo identification options for Missouri voters could potentially have a devastating impact. In 2014, Secretary of State Jason Kander released a report stating that such restrictions could result in the disenfranchisement of 220,000 voters.²³¹ The report stated that among those voters are "students with current school-issued photo ID's, senior citizens who no longer drive, Missourians who rely on public transportation, and women who have changed their last names due to marriage or divorce."²³² This bill may soften that impact by requiring the state to provide both a nondriver's

225. Tynan Stewart, *Changes to Missouri's Voter ID Law Approved by House After Supreme Court Ruling*, ST. LOUIS POST-DISPATCH (Mar. 3, 2020), https://www.stltoday.com/news/local/govt-and-politics/house-votes-to-revise-missouri-s-voter-id-law-after/article_98ed681d-0e57-5953-ae56-6ff1b249a822.html [<https://perma.cc/ED5D-JQUU>].

226. H.B. 1600, 100th Gen. Assemb., 2d Reg. Sess. (Mo. 2020).

227. *Id.*

228. *Id.*

229. *Id.*

230. Stewart, *supra* note 225.

231. Jason Kander, *House Bill 1073 Impact Report: The Effect on Missouri Voters* (2014), <https://www.sos.mo.gov/CMSImages/NewsReleases/2014ImpactReport.pdf> [<https://perma.cc/VAX4-MMB3>].

232. *Id.*

license and the documentation necessary to obtain it free of charge.²³³ Additionally, the bill provides that a person attempting to obtain necessary documentation “may request the secretary of state to facilitate the acquisition of such documents” and that “[t]he secretary of state shall pay any fee or fees charged” by another state or the federal government when such documents must be obtained through those entities.²³⁴

But such provisions do not eliminate all the burdens that photo ID requirements impose. As the Supreme Court of Missouri noted in *Weinschenk*, the time and ability to navigate bureaucracies in order to obtain the necessary documentation and then proper identification in order to vote is “plainly a cumbersome procedure.”²³⁵ For example, it takes six to eight weeks to obtain a Missouri birth certificate.²³⁶ “Those things that require substantial planning in advance of an election to preserve the right to vote can tend to ‘eliminate from the franchise a substantial number of voters who did not plan so far ahead.’”²³⁷

Additionally, the bill does nothing to mitigate the travel-related burdens of obtaining a photo ID.²³⁸ As Justice Souter pointed out in his *Crawford* dissent, “[t]he need to travel to a [licensing] branch will affect voters according to their circumstances, with the average person probably viewing it as nothing more than an inconvenience. Poor, old, and disabled voters who do not drive a car, however, may find the trip prohibitive.”²³⁹ In order to obtain a photo ID from the state, a voter must find a time that a nearby licensing branch is open that coincides with a time that the voter is free from work, childcare, and the other responsibilities of daily life, incur the cost of gas or public transportation required to get there and back, and then physically do so.²⁴⁰ While this may seem like a small burden to many people, especially lawyers, judges, and lawmakers, it can be prohibitive to many others in less comfortable living situations. Such persons were represented in the record of *Weinschenk*, such as William Kottmeyer, whose limited mobility made it “difficult . . . to stand in line at the Department of Revenue,” and Robert Pund,

233. H.B. 1600, 100th Gen. Assemb., 2d Reg. Sess. (Mo. 2020).

234. *Id.*

235. *Weinschenk v. State*, 203 S.W.3d 201, 214 (Mo. 2006) (quoting *Harman v. Forssenius*, 380 U.S. 528, 541 (1965)).

236. *Id.*

237. *Id.* at 215 (quoting *Harman v. Forssenius*, 380 U.S. 528, 539–40 (1965)).

238. *See* H.B. 1600, 100th Gen. Assemb., 2d Reg. Sess. (Mo. 2020).

239. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 212 (2008) (Souter, J., dissenting).

240. Keesha Gaskins & Sundeep Iyer, *The Challenge of Obtaining Voter Identification*, BRENNAN CENTER FOR JUSTICE (July 18, 2012), https://www.brennancenter.org/sites/default/files/2019-08/Report_Challenge_of_Obtaining_Voter_ID.pdf [<https://perma.cc/HJX4-EP89>].

whose physical condition required him to “arrange transportation to and from the Department of Revenue and to employ an attendant to assist him.”²⁴¹

Further, the need for a photo ID requirement is not obvious. Photo ID requirements theoretically combat voter impersonation, but the Court in *Weinschenk* examined ample evidence that voter impersonation fraud is not a problem in Missouri.²⁴² In 2015, Missouri State Senator Will Kraus pointed to sixteen voter fraud convictions in Missouri as evidence of the need for photo ID requirements.²⁴³ However, PolitiFact pointed out that all of those were cases of fraud in registration, not voter impersonation.²⁴⁴ In his 2014 report, Secretary Kander stated that “[t]here has not been a single case of voter impersonation fraud reported to the Secretary of State’s office.”²⁴⁵ As one secretary of state’s spokeswoman put it, “I can’t prove there’s no bigfoot. There’s just no bigfoot.”²⁴⁶

While the future of Missouri’s latest voter ID bill is uncertain, it would seem to be a safe bet that if the bill is ever enacted into law, the law will end up back in front of the Supreme Court of Missouri. Even with the 2016 constitutional amendment and provisions in the bill softening the impact on voters lacking an ID, it seems unlikely the bill could overcome a legal challenge. In *Priorities USA*, Judge Russell expressly stated that “[i]n *Weinschenk*, this Court made clear that requiring individuals to present photo identification to vote is unconstitutional.”²⁴⁷ However, two of the seven judges directly expressed a belief that a photo ID requirement would pass constitutional muster,²⁴⁸ so it is at least possible that such a bill will someday be upheld by the court. For reasons of public policy, fairness, and democratic integrity, one should hope that it never does.

Those concerned about Voter ID laws and other voter suppression efforts can look to both legislative and constitutional reforms. In 2019, the House of Representatives passed legislation aimed at restoring the portions of the Voting Rights Act struck down by the Supreme Court in *Shelby*.²⁴⁹ Calls for

241. *Weinschenk v. State*, 203 S.W.3d 201, 209 (Mo. 2006).

242. *Id.* at 209–10.

243. David A. Graham, *The Voter-ID Fight in Missouri*, THE ATLANTIC (Apr. 29, 2016), <https://www.theatlantic.com/politics/archive/2016/04/missouri-voter-id-fight/480450/> [<https://perma.cc/8NKH-WFMS>].

244. Adam Aton, *Numbers Don’t Support Will Kraus’ Statement on Voter Fraud*, POLITIFACT (Jan. 4, 2016), <https://www.politifact.com/factchecks/2016/jan/04/will-kraus/numbers-dont-support-will-kraus-statement-voter-fr/> [<https://perma.cc/4JWC-NKPH>].

245. Kander, *supra* note 231.

246. Aton, *supra* note 244.

247. *Priorities USA v. State*, 591 S.W.3d 448, 458 (Mo. 2020) (en banc).

248. *Id.* at 462.

249. Sheryl Gay Stolberg & Emily Cochrane, *House Passes Voting Rights Bill Despite Near Unanimous Republican Opposition*, N.Y. TIMES (July 18, 2020) <https://www.nytimes.com/2019/12/06/us/politics/house-voting-rights.html>

a new Voting Rights Act were renewed by many in 2020, including by President Barack Obama, in the wake of Representative John Lewis's passing.²⁵⁰ Some have called for an expansion of jurisdictions covered by the law, as many states not covered by the original preclearance formula, including Missouri, have implemented or attempted to implement voting restrictions.²⁵¹

A more straightforward but admittedly more difficult proposal would be to amend the United States Constitution to explicitly guarantee the right to vote. The past sixteen years of voting rights battles in Missouri have shown that an unambiguously guaranteed constitutional right to vote can make efforts to restrict voting much more difficult. As political scientist Norman Ornstein has noted, “[m]any, if not most, Americans are unaware that the Constitution contains no explicit right to vote.”²⁵² One survey published in the *Fordham Urban Law Journal* found that 93.2% of respondents believed that the right to vote was either the most important or one of the most important rights in a democracy.²⁵³ Democratic representatives proposed voting rights amendments in 2013 and 2017, but those efforts gained little traction.²⁵⁴ In a country where thinkers across the political spectrum so frequently profess liberal democratic values, such an amendment seems long overdue.

At least one commentator has argued that Missouri's success in staving off voter ID bills to this point may be attributed to the state's judicial selection process, which has been described as the “gold standard in the reform

[<https://perma.cc/3SDE-D8TP>]. All but one Republican voted against the bill, underlying its almost certain failure in the Republican-controlled Senate. *Id.*

250. Luke Broadwater, *After Death of John Lewis, Democrats Renew Push for Voting Rights Law*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/us/john-lewis-voting-rights-act.html> [<https://perma.cc/3YH9-W5UE>]; Bill Barrow, *At Lewis Funeral, Obama Calls for Renewing Voting Rights Act*, ASSOCIATED PRESS (July 30, 2020), <https://apnews.com/4014bb5735da1a3a7dfd8f8a481dab02>.

251. Norm Ornstein, *The U.S. Needs a Constitutional Right to Vote*, THE ATLANTIC (Oct. 31, 2013), https://www.theatlantic.com/politics/archive/2013/10/the-us-needs-a-constitutional-right-to-vote/281033/?gclid=EAIaIQobChMIibKf0qSb6wIVD77ACh0cZgS4EAMYASAAEgIkW_D_BwE [<https://perma.cc/P75E-W244>].

252. *Id.*

253. Brian Pinaire et. al., *Barred from the Vote: Public Attitudes Toward the Disenfranchisement of Felons*, 30 FORDHAM URB. L.J. 1519, 1533 (2003).

254. *Id.*; Office of Mark Pocan, *Pocan and Ellison Announce Right to Vote Amendment*, U.S. REPRESENTATIVE MARK POCAN (May 13, 2013), <https://pocan.house.gov/media-center/press-releases/pocan-and-ellison-announce-right-to-vote-amendment> [<https://perma.cc/74S3-9B9C>].

community” by the Brennan Center for Justice.²⁵⁵ Under the Missouri plan, a seven-person commission made up of three lawyers elected by the lawyers of the Missouri Bar, three citizens selected by the governor, and the chief justice selects three candidates to fill judicial vacancies.²⁵⁶ The governor must then choose one of those three candidates within sixty days or else the commission will make the final decision.²⁵⁷ This system is aimed at reducing partisan politics in the judicial selection process and subsequent judicial decisions.²⁵⁸ This case seems to provide anecdotal evidence that the system is successful in achieving that goal. In contrast with many recent United States Supreme Court voting rights cases that have been decided on an ideological basis,²⁵⁹ this case was decided in a five-to-two vote by a majority consisting of judges appointed by both parties.²⁶⁰ As the commentator noted, “There is no surefire way to strip partisan politics from the judicial selection process. But there are ways to mitigate the impact of such politics. And Missouri does an especially good job of achieving that goal.”²⁶¹ Perhaps those concerned about protecting voting rights can look to court reform as a way of preventing partisan efforts to impose obstructions to voting.

At the Missouri GOP’s annual convention, Secretary Ashcroft stated, “I don’t care what the Supreme Court says. You all should make the decision, the people of the state.”²⁶² On its face, this statement should obviously be troubling. Elected officials should absolutely “care what the Supreme Court says” and respect the institution of the court, the rule of law, and the rights and protections afforded to citizens by the state constitution. The fact that this statement was made at a political convention and was directed toward only members of one party should further highlight the partisan nature of these

255. Ian Millhiser, *Voting Rights Advocates Just Won a Small but Important Victory in Missouri*, VOX (Jan. 16, 2020, 8:10 AM), <https://www.vox.com/2020/1/16/21067110/missouri-voter-id-supreme-court-priorities-usa-state> (quoting John F. Kowal, *Judicial Selection for the 21st Century* BRENNAN CENTER FOR JUSTICE (June 6, 2016), <https://www.brennancenter.org/our-work/research-reports/judicial-selection-21st-century> [<https://perma.cc/J5N3-6RSJ>]).

256. Ian Millhiser, *Voting Rights Advocates Just Won a Small but Important Victory in Missouri* (Jan. 16, 2020, 8:10 A.M. EST), <https://www.vox.com/2020/1/16/21067110/missouri-voter-id-supreme-court-priorities-usa-state>.

257. *Id.*

258. MISSOURI SUPREME COURT, *Missouri Nonpartisan Court Plan* <https://web.archive.org/web/20070709014058/http://www.courts.mo.gov/page.asp?id=297> (last visited Mar. 23, 2020).

259. See *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181 (2008); *Shelby Cty., Ala. v. Holder*, 570 U.S. 529 (2013); *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019).

260. *Priorities USA v. State*, 591 S.W.3d 448 (Mo. 2020) (en banc).

261. Millhiser, *supra* note 255.

262. Stewart, *supra* note 225.

efforts and alarm citizens concerned about the fundamental fairness of our democratic institutions. A major theme of voter ID caselaw is that courts have consistently recognized that the state has a compelling interest in preserving the integrity of its elections.²⁶³ But imposing voting requirements with the potential to disenfranchise thousands of Missourians on a partisan basis in order to ostensibly combat voter fraud has the opposite effect.

VI. CONCLUSION

Priorities USA v. State is a win for voting rights supporters in Missouri. The decision should provide an immediate impact in ensuring citizens are able to exercise their right to vote. However, the decision will not bring an end to the nearly two-decade long battle over voter ID requirements in Missouri. Missourians should hope that lawmakers, activists, lawyers, and courts will remain vigilant in protecting our fundamental right to vote.

263. *Priorities USA*, 591 S.W.3d at 453.