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SCOTUS & Voting

Michael Sean Winters | Jun. 18, 2013 Distinctly Catholic

The United States Supreme Court ruled 7-2 yesterday that an Arizona law requiring proof of citizenship in order to register to vote violated the Constitutional prerogatives of the federal government, which in 1993 passed the National Voter Registration Act, allowing for a simplified registration form. In the simplified form, a would-be voter simply swears that he or she is a citizen, under penalty of perjury if the statement is false, but does not have to produce a birth certificate or passport or other proof of citizenship.

The court?s decision was written by Justice Antonin Scalia and his opinion was joined by six of his colleagues. 7-2 rulings are good for the country, demonstrating that not everything in this town needs to be seen through a partisan lens. But, I am also weirdly grateful to Justices Samuel Alito and Clarence Thomas who dissented, not because they are right on the merits, because they were not. But the fact that these eminent nine jurists, including five from the so-called ?conservative? majority divided on a pretty fundamental issue, should instruct some bishops I know to be a little cautious about making sweeping claims about what the First Amendment does and does not require as they begin their Fortnight for Freedom later this week. The Constitution is complicated. Law is complicated. It is not given to bumper sticker reductions.

Justice Scalia pegged his opinion on the fact that the Constitution explicitly invests Congress with the authority to regulate elections which are otherwise entrusted to the states. Article I, Section 4 reads:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

In his view, the 1993 National Voter Registration Act trumped the Arizona law based on a fairly obvious reading of this text, and Scalia likes to fancy himself a textualist, someone who interprets the Constitution as it was written and understood at the time it was adopted.

We are still waiting for the court to rule on Section 5 of the Voting Rights Act which subjects the voting requirements and electoral procedures of certain states with an historic pattern of discrimination in voting to prior review by the U.S. Justice Department. Here, the Court may follow the same Article I, Section 4 language that they employed in deciding the Arizona law. But, I would commend a different set of words to the justices, the opening three words in the entire text: We the People.

Our Constitution has, I think it can be said, two premises: First, government obtains its powers from the consent of the governed and, secondly, those powers must be delineated and checked, deployed in such a way that various instruments in the exercise of power ? federalism, the separation of powers, judicial review ? serve to frustrate any tyranny. These voter ID laws that Republican state legislatures have been passing, the restrictions on early voting and the like, all represent a profound, and profoundly disturbing, attempt to flip the equation of democracy: Instead of letting the voters decide who will win elections, these restrictions aim to let the

government decide who will vote. These efforts to restrict the franchise are nothing more than a denial of the opening three words of the Constitution, a denial of the essential democracy that has successfully, if fitfully, made our democracy a success.

I can hear the cries of voter fraud. This is not a problem in the United States. It was not a problem in Arizona where something like two dozen cases of non-citizens voting out of 2.5 million were presented by those defending the Arizona law. Conversely, thousands of people were denied the right to vote because they lacked the government issued identification the Arizona law required. There are problems with the way we conduct elections in this country but voter fraud is not one of them.

There are those who object, ?Well, everyone has a driver?s license!? First, a driver?s license is not proof of citizenship and, second, not every one has one. If you live in the city, never have had or need a car, why would you have a driver?s license. If you are poor and have no means to travel abroad, why would you have a passport? And, Lord knows I have no idea where my birth certificate is and, even if I did, I am sure there are some of these same people who worry about voter fraud who were denying the authenticity of Barack Obama?s birth certificate, no?

I hope the justices will conclude that Section 5 of the Voting Rights Act is still needed. One has only to look at the shenanigans going on in the North Carolina legislature to realize that the federal government is needed to guarantee the right to vote is protected for all citizens. Federalism is a two-way street as Article I, Section 4 clearly attests. In the meantime, we can be glad that the Court tossed a pernicious Arizona law that was designed only to keep minorities and poor folk from voting. Our country is better than that. The Republican Party used to be better than that. I am glad seven justices are still better than that.

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