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Judge sets oral arguments to determine if Texas intended to discriminate with voter ID law

Texas Attorney General Ken Paxton had asked the court to postpone the issue until after the legislative session ends next year

By David Saleh Rauf | August 25, 2016 | Updated: August 25, 2016 2:52pm

2



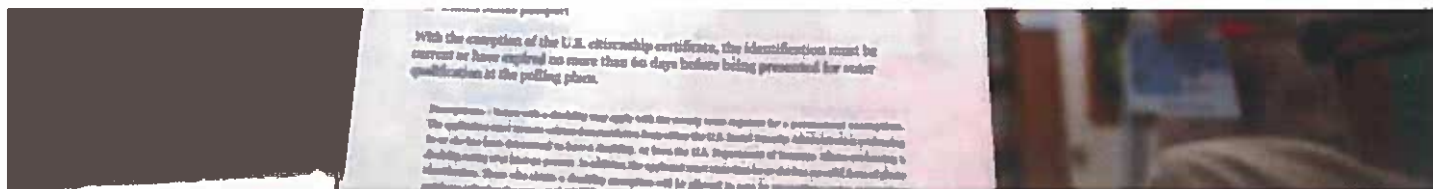


Photo: LM Otero, STF / AP

A sign tells voters of voter ID requirements before participating in the primary election at Sherrod Elementary school in Arlington, Texas, Tuesday, March 1, 2016. (AP Photo/LM Otero). A federal judge has relaxed voter ID requirements in Texas for November's election.

AUSTIN — A federal judge has scheduled oral arguments for Jan. 24 to determine if the Texas Legislature approved a voter ID law in 2011 with the intent to discriminate against minorities.

The U.S. 5th Circuit Court of Appeals ruled last month that Texas' voter ID law had a discriminatory effect, but said a lower court judge overreached in finding that lawmakers had a discriminatory intent in passing the measure.

However, the federal appeals court instructed U.S. District Judge Nelva Gonzales Ramos to revisit the issue.

Ramos, in a two-page order Thursday, rejected arguments from Texas Attorney General Ken Paxton that she should back off the discriminatory intent claim until the Legislature has a chance to fine-tune the voter ID law when lawmakers come back to Austin. Paxton's office proposed a schedule for the intent claim in which the first set of briefs would be filed on June 28 -- 30 full days after the Legislature's regular session is set to end.

Texas also argued its plan to appeal the 5th Circuit's ruling to the U.S. Supreme Court should halt the lower court from moving forward with the discriminatory intent claim (State's filing on the issue [here](#) & plaintiff's filing [here](#)).

Ramos also rebuffed that argument.

From **today's order:**

"The Court rejects Defendants' argument that the Fifth Circuit directed this Court to defer consideration of this matter until after the next Texas legislative session. This Court is to determine the purpose(s) of the SB 14 legislative action, which can be determined only by evidence of events at or before the time of the enactment. While the Texas legislature may take action that impacts the remedies, if any, to be imposed, the Court must first find upon reconsideration of the evidence entered of record in the 2014 trial whether SB 14 was passed with a discriminatory purpose.

Defendants also argue that this Court should postpone action pending their appeal of this matter to the United States Supreme Court. Until Defendants take their appeal and until this Court is divested of jurisdiction to proceed, the Court has a duty to the parties to proceed with the adjudication of this case without unnecessary delay."

The discriminatory intent claim is a key element in the still-pending voter ID case. If it is found that state lawmakers acted in that manner, the law could not only be struck down but it could open the door for a court to once again require Texas to seek federal approval when changing its elections laws.

Texas' voter ID law has already been substantially weakened for November's election, per a deal that Paxton agreed to with the U.S. Department of Justice and several minorities groups suing the state. That deal greatly expands the list of acceptable identifications allowed to cast a ballot beyond the seven forms of ID mandated by the state law (those presenting an alternate form of ID will also have to sign an affidavit).

Paxton, in an interview with **Fox News last week**, publicly signaled for the first time that the state's planned appeal to the Supreme Court will not affect the deal Texas has agreed to for November.

"We're going forward with an interim plan that requires an affidavit if somebody does not have a photo ID and cannot get a photo ID," Paxton said.



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Express-News

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OPINION | COMMENTARY

Voter ID and the Real Threat to Democracy

Throwing out Voter ID laws won't help minorities in Texas, North Carolina and Wisconsin.

By HANS VON SPAKOVSKY and JOHN FUND

Aug. 1, 2016 6:45 p.m. ET

The Supreme Court concluded in 2008 that voter ID is constitutional and doesn't impose an unreasonable burden on voters. But the recent decisions of three federal courts throwing out voter-ID laws in North Carolina, Texas and Wisconsin as discriminatory have put opponents of common-sense election reforms in raptures. These erroneous rulings twist the Voting Rights Act from a law intended to stop racial discrimination into one that transfers the power to determine routine election procedures—which the Constitution delegates to the states—to the judiciary.

All three rulings share common characteristics, starkly outlined by Fifth U.S. Circuit Court of Appeals Judge Edith H. Jones in her dissent in the Texas case, *Veasey v. Abbott*. Judge Jones wrote that the majority opinion “misconstrues the law, misapplies the facts, and raises serious constitutional questions.” That indictment applies to the North Carolina (*NAACP v. McCrory*) and Wisconsin (*One Wisconsin Institute v. Thomsen*) cases, too.

The majority in the Texas ruling, Judge Jones said, fanned “the flames of perniciously irresponsible racial name-calling” by making “inflammatory and unsupportable charges of racist motivation [that] poison the political atmosphere and tarnish the images of every legislator” in Texas. The “multi-thousand page record yields not a trace, much less a legitimate inference, of racial bias by the Texas Legislature.”

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The three-judge panel of the Fourth Circuit Court of Appeals that threw out North Carolina’s election reforms last week engaged in the same type of “perniciously irresponsible racial name-calling” that is not supported by the evidence or common sense. The almost 500-page opinion in April by the district court from which the case was appealed contained detailed factual findings that refute the appeals court’s charges of racial discrimination.

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- [Here Comes the 2014 Voter Fraud](#)

The basic charge is that these state laws were intended to, or would have the effect of, preventing voters, particularly minority voters, from casting ballots. Yet as Judge Jones said, “despite extraordinary efforts to find voters ‘disenfranchised’ by [the Texas law], the DOJ could not uncover any, and no representative of the plaintiff organizations found any of their members unable to vote” because of the law.

The same is true in North Carolina. The Justice Department was contesting that state’s voter-ID law, the elimination of same-day registration and out-of-precinct voting, and the state’s limiting early voting to “only” 10 days. The plaintiffs, in addition to failing to produce witnesses unable to vote because of these changes, produced no voter-turnout information to support their false claims. The actual turnout data show that voters were not kept out of the polls by any of these requirements.

The Justice Department’s so-called experts claimed that turnout would be depressed because—in a patronizingly racist claim that the Fourth Circuit believed—black voters are “less sophisticated” and can’t figure out how to register and vote. But as the district court had already discovered, black voters in North Carolina actually “fared *better* in terms of registration and turnout rates in 2014, *after the new law was implemented*, than in 2010, when the old provisions were in place.”

African-American turnout “not only *increased*, but did so *at a greater rate* than that of other groups (including whites).” Yet the Fourth Circuit discounted this evidence. The plaintiffs in the Texas case also ignored voter-turnout data for the simple reason that there was no evidence that the law—which was in effect for several elections—affected turnout at all.

This is certainly true in other states, like Georgia and Indiana, where voter-ID laws have been in place for years. None of the bad effects predicted by opponents has occurred. Turnout has not declined. But this actual evidence is ignored in favor of ill-informed speculation and, as Judge Jones said, “unsupportable charges of racist motivation.”

Especially pernicious are the North Carolina and Wisconsin rulings holding that eliminating same-day registration or reducing early voting violates federal law. Early voting didn’t even exist until Texas first adopted it in 1988. The idea that it is discriminatory to have only 10 days of early voting—instead of 20 or 30—is absurd. Under that view, the more than a dozen states that have never implemented early voting are all breaking federal law.

Only about a dozen states offer same-day registration. Everywhere else, you have to register to vote before an election. Yet in the Fourth Circuit's view, the majority of states that have never implemented same-day registration must also be discriminating in violation of federal law. Also absurd is the court's opinion that not allowing out-of-precinct voting is discriminatory. Most states have never allowed such voting.

What Judge Jones said in the Texas case applies to all of these decisions: They move "us another step down the road of judicial supremacy by potentially subjecting virtually every voter regulation to litigation in federal court." This is a road where purposeful racial discrimination "can be 'inferred' even without a shred" of evidence. They are prime examples of "unauthorized and extra-legislative transfers of power to the judiciary" that "disable the working of the democratic process." And harm the security and integrity of the election process.

Mr. von Spakovsky, a senior legal fellow at the Heritage Foundation, and Mr. Fund, a columnist for National Review, are the authors of "Who's Counting? How Fraudsters and Bureaucrats Put Your Vote at Risk" (Encounter, 2012).

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Everything You've Ever Wanted to Know About Voter ID Laws

More than 30 states have enacted some version of voter ID law in recent years. How much do these laws change voting rules and what impact could they have on the general election?

by Suevon Lee and Sarah Smith
ProPublica, March 9, 2016, 7:33 a.m.



A man leaves a booth after voting in Kennebunk, Maine, in 2002. (Gregory Rec/Portland Press Herald via Getty Images)

This post is being kept up-to-date. It was first published on July 23, 2012.

Voter ID laws are a contentious issue in the 2016 presidential election cycle. Many of the statutes will have their first test at the polls this year. Supporters say the laws — which 36 states have now enacted in some form — are needed to combat voter fraud, while critics see them as a tactic to disenfranchise voters.

We've taken a step back to look at the facts behind the laws and break down the issues at the heart of the debate.

So what are these laws?

They are measures intended to ensure that a registered voter is who he says he is and not an impersonator trying to cast a ballot in someone else's name. The laws, most of which have been passed or strengthened in the last five years, require that registered voters show ID before they're allowed to vote. Exactly what they need to show varies. Some states require a government-issued photo, while in others a current utility bill or bank statement is sufficient.

As a registered voter, I thought I always had to supply some form of ID during an election.

Not quite. Per federal law, first-time voters who registered by mail must present a photo ID or copy of a current bill or bank statement. Some states generally advise voters bring some form of photo ID. But prior to the 2006 election, no state ever required a voter to produce a government-issued photo ID as a condition to voting. Indiana in 2006 became the first state to enact a strict photo ID law, a law that was upheld two years later by the U.S. Supreme Court.

Why are these voter ID laws so strongly opposed?

Voting law opponents contend these laws disproportionately affect elderly, minority and low-income groups that tend to vote Democratic. Obtaining photo ID can be costly and burdensome. While many states with strict laws offer a free state ID for people without any other way to vote, these IDs require documents like a birth certificate that can cost up to \$25 in some places. According to a study from NYU's Brennan Center, 11 percent of voting-age citizens lack necessary photo ID while many people in rural areas have trouble accessing ID offices.

A lawsuit filed against Alabama in early December 2015 cites the example of a high schooler who can't vote because she lacks a driver's license. According to the suit, she needs to get a state issued voter ID at the DMV, but the one nearest to her is only open one day per month and there's no public transportation to another DMV 40 miles away roundtrip.

During closing arguments in a 2012 case over Texas's voter ID law, a lawyer for the state brushed aside geographical obstacles as the "reality to life of choosing to live in that part of Texas."

Former Attorney General Eric Holder and others have compared the laws to a poll tax, in which Southern states during the Jim Crow era imposed voting fees, which discouraged blacks, and even some poor whites — until the passage of grandfather clauses — from voting.

Given the sometimes costly steps required to obtain needed documents today, legal scholars argue that photo ID laws create a new "financial barrier to the ballot box."

Just how well-founded are fears of voter fraud?

There have been only a small number of fraud cases resulting in a conviction. A New York Times analysis from 2007 identified 120 cases filed by the Justice Department over five years. These cases, many of which stemmed from mistakenly filled registration forms or misunderstanding over voter eligibility, resulted in 86 convictions.

There are "very few documented cases," said UC-Irvine professor and election law specialist Rick Hasen. "When you do see election fraud, it invariably involves election officials taking steps to change election results or it involves absentee ballots which voter ID laws can't prevent," he said.

An analysis by News21, a national investigative reporting project, identified 10 voter impersonation cases out of 2,068 alleged election fraud cases since 2000 — or one out of every 15 million prospective voters.

One of the most vocal supporters of strict voter ID laws, then-Texas Attorney General Greg Abbott (now the state's governor), told the Houston Chronicle in July 2012 that his office has prosecuted about 50 cases of voter fraud in recent years. "I know for a fact that voter fraud is real, that it must be stopped, and that voter id is one way to prevent cheating at the ballot box and ensure integrity in the electoral system," he told the paper. Abbott's office did not respond to ProPublica's request for comment.

How many voters might be turned away or dissuaded by the laws, and could they really affect the election?

It's not clear.

According to the Brennan Center, about 11 percent of U.S. citizens, or roughly 21 million citizens, don't have government-issued photo ID. This figure doesn't represent all voters likely to vote, just those *eligible* to vote.

A 2012 analysis by Reuters and research firm Ipsos of data culled from 20,000 voter interviews found that those lacking proper ID were less likely to vote anyway, "regardless of state law changes."

Among those who said they were "certain to vote," only 1 percent said they did not have proper ID while another 1 percent said they were uncertain whether they had the proper ID. The analysis also found that those who lack valid photo ID tended to be young people, those without college educations, Hispanics and the poor.

Much of the academic literature finds that voter ID laws have an outsized effect on minorities: A working paper from researchers at the University of California, San Diego found that states with a strict photo ID law saw a significant decrease in turnout among minority and immigrant voters and an increase in the participation gap between white and nonwhite voters.

Exact state figures on how many people lack acceptable IDs can be hard to nail down. Before Pennsylvania's voter ID law was struck down, a 2012 analysis of state records by the Philadelphia Inquirer found that nearly 760,000 registered voters, or 9.2 percent of the state's 8.2 million voter base, don't own state-issued ID cards. State officials, on the other hand, placed the number between 80,000 and 90,000.

In a 2012 trial over Wisconsin's voter ID law, the plaintiff estimated that about 300,000 voters didn't have ID and attempted to analyze the demographic breakdown. An expert for the defense put the number between 100,000 and 300,000 and called the demographics an "open question."

As for the potential effect on the election, one analysis by Nate Silver at the New York Times' FiveThirtyEight blog estimates they could decrease voter turnout anywhere between 0.8 and 2.4 percent. It doesn't sound like a very wide margin, but it all depends on the electoral landscape.

"We don't know exactly how much these new laws will affect turnout or skew turnout in favor of Republicans," said Hasen, author of *The Voting Wars: From Florida 2000 to the Next Election Meltdown*. "But there's no question that in a very close election, they could be enough to make a difference in the outcome."

When did voter ID laws get passed — and which states have the strictest ones?

The first such law was passed as early as 2003, but momentum has picked up in recent years. In 2011 alone, legislators in 34 states introduced bills requiring voters show photo ID — 14 of those states already had existing voter ID laws, but lawmakers sought to toughen statutes, mainly to require proof of photo identification.

The National Conference of State Legislatures has a helpful breakdown of states' voter ID laws and how they vary.

Indiana, Georgia, Tennessee, Kansas, Mississippi, North Dakota, Virginia, Wisconsin and Texas have the toughest versions. These states won't allow voters to cast a regular ballot without first showing valid photo ID. Other states with photo ID laws offer some more flexibility by providing voters with several alternatives.

What happens if a voter can't show valid photo ID in these states?

These voters are entitled to a provisional ballot. To ensure their votes count, however, they must produce the mandatory ID within a certain time frame and affirm in person or writing they are the same individual who filled out a temporary ballot on Election Day. The time limits vary: They range anywhere from up to three days after the election (Georgia) to noon the Monday after the election (Indiana).

Are there any exceptions to the photo ID requirement?

Yes: Indigency or religious objections to being photographed. In Indiana, voters will be given a provisional ballot and must sign an affidavit for their exemption by a certain date. Texas grants an exception to voters who don't have an ID because of a recent natural disaster. For a more specific breakdown of all exceptions, see this list.

Voter ID laws were a big story in 2012. Why are we still talking about them?

A few reasons. While a majority of the voter ID laws were passed before the 2012 election, not all of them went into effect immediately. Wisconsin's voter ID law, passed in 2011, was only in effect for a low-turnout primary in a few municipalities before getting tied up in court and will have its first major test in 2016. States such as Virginia, Texas, and North Carolina passed voter ID laws after 2012 that haven't yet been tested in a high-turnout presidential election (Virginia and Texas' 2013 laws were in effect for the states' 2014 midterm elections, but North Carolina's voter ID law hasn't yet been in effect for a federal election).

This election cycle is also the first presidential election without Section 4(b) of the Voting Rights Act in effect. In 2013, it was struck down in a 5-4 Supreme Court decision, *Shelby County v. Holder*. States previously required to get preclearance from the Justice Department to change voting laws under a formula laid out in Section 4(b) no longer have to. This means there's a whole spate of new voting laws in effect. Texas, for example, was initially blocked from implementing its voter ID law until it received preclearance. But the day of the Shelby ruling, the state announced that the law would take effect.

It also means that it's harder to challenge laws. The Justice Department can still challenge laws for discriminatory voting practices under Section 2 of the Voting Rights Act. But the plaintiff carries the burden of proof under Section 2 challenges, making them harder to win.

"This is the first presidential election in more than 50 years of the Voting Rights Act that the department's ability to enforce the act has been so severely cut back," Vanita Gupta, the head of the Justice Department's civil rights division, told The Washington Post the week before Super Tuesday.

Legal challenges to the laws — from groups like the NAACP, League of Women Voters, and Democratic lawyers — are still winding their way through the legal system. In many states, these cases aren't the first time the laws have been challenged.

What are the current challenges to the laws?

Some voter ID laws have been blocked by the courts. A Pennsylvania judge struck down the state's voter ID law in 2014, and the then-governor declined to appeal the ruling to the state Supreme Court.

Marc Elias, a Democratic lawyer who also serves as general counsel for Hillary Clinton's presidential campaign, brought suit against voter ID laws in Virginia, Wisconsin, Ohio and North Carolina (Elias isn't acting on behalf of the Clinton campaign). In Virginia, Elias is arguing that the law is an undue burden on poor and minority voters who are unlikely to have an ID and are more likely to vote Democrat.

The NAACP Legal Defense Fund sued Alabama over its voter ID law in early December, alleging it discriminated against African Americans. A judge declined to issue a preliminary injunction on Feb. 18, but hasn't yet ruled on the suit.

Texas' voter ID law is in a legal tangle: in August 2015, a federal appeals panel found that the law discriminated against minorities, but it disagreed with the lower court's finding that the law was the equivalent of a poll tax and intentionally discriminatory. The appellate court sent the law back to the lower court for review. In March 2016, the federal appeals court decided to hear a challenge to the law en banc — the whole court, not just the panel, will hear the case. Meanwhile, the law remains in effect.

Are there other voter ID laws in effect that ask for but don't necessarily require photo ID?

Yes. In these so-called "non-strict photo ID states" — Florida, Louisiana, Michigan, Idaho, South Dakota and Hawaii — individuals are requested to show photo ID but can still vote if they don't have one. Instead, they may be asked to sign affidavits affirming their identity or provide a signature that will be compared with those in registration records.

Why has there been such a recent surge in voter ID legislation around the country?

This report by NYU's Brennan Center for Justice cites primarily big Republican gains in the 2010 midterms which turned voter ID laws into a "major legislative priority." Aside from Rhode Island, all voter ID legislation has been introduced by Republican-majority legislatures.

News21 also has this report on the close affiliation between the bills' sponsors and the conservative nonprofit group, American Legislative Exchange Council (ALEC).

Republican figures have championed such laws. In a now-infamous remark, Mike Turzai, majority leader of the Pennsylvania House of Representatives, praised the state's legislative accomplishments — including passing a voter ID law — at a 2012 Republican State Committee meeting.

"Voter ID, which is gonna allow Governor Romney to win the state of Pennsylvania, done," he said.

A spokesman for Turzai, Steve Miskin, told ProPublica that Turzai was "mischaracterized" by the press. "For the first time in many years, you're going to have a relatively level playing field in the presidential elections" as the result of these new laws," Miskin said.

Correction August 20, 2012: An earlier version of this story incorrectly stated "voting law advocates contend these laws disproportionately affect elderly, minority and low-income groups that tend to vote Democratic." It's voting law opponents who make that contention.

Correction July 24, 2012: An earlier version of this story said Texas went to federal court to challenge the DOJ's denial of preclearance. In fact, Texas filed a lawsuit seeking preclearance from the federal district court two months before the DOJ announced its decision. Also, some states require a government-issued photo that does not have to come from the federal government as first detailed.

Clarification Sept. 25, 2012: This post has been clarified to reflect details about who was discouraged from voting under a poll tax.

Correction Oct. 4, 2012: An earlier version of this story stated that New Hampshire was unsuccessful in enacting a voter ID law. In fact, its legislature overrode the governor's veto and the law is now in place in the state.

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Elections



A man casts his vote at a polling place inside a residential garage, Nov. 6, 2012, in Forest City, Pa. **Matt Slocum/AP**

Pennsylvania governor won't challenge ruling striking down voter ID law

05/08/14 05:19 PM – UPDATED 05/08/14 09:20 PM

By **Zachary Roth**

Pennsylvania Gov. Tom Corbett said Thursday that the state wouldn't appeal a recent ruling striking down a Republican-backed voter ID law. It's the latest win for opponents of voter ID.

74The Commonwealth will not pursue an appeal to the Pennsylvania Supreme Court to overturn the Commonwealth Court's decision to enjoin Act 18's photo identification mandate," Corbett, a Republican, said in a statement.

A state judge ruled in January that the law, passed in 2012, violated the state constitution by imposing an unreasonable burden on the right to vote. The court found no evidence the law was necessary either to prevent fraud or to keep public confidence in the fairness of the election process.

“During the trial we heard the stories of numerous voters throughout the state who, despite their best efforts, were unable to get the identification that the now-invalidated voter ID law required of them to vote,” Marian Schneider, a senior attorney with the Advancement Project, a civil rights group that challenged the law, said in a statement. “This is not how a democracy should work. Today’s decision is a victory for keeping Pennsylvania elections free, fair and accessible for all voters.”

“We commend the governor for not continuing to push a dangerous and unnecessary law that would disenfranchise hundreds of thousands of voters,” added Witold Walczak, the legal director for the ACLU of Pennsylvania, which also opposed the law.

Corbett, who polls suggest faces a tough re-election fight this fall, raised the idea of working with lawmakers to modify the law so that it could pass muster in the courts – but suggested it wasn’t a priority.

The governor’s decision is the latest victory for opponents of voter ID. A federal court in Wisconsin and a state court in Arkansas recently struck down voter ID laws in those states.

“The Administration will work with the General Assembly to address these issues,” he said.

“However, through the current legislative term, we must remain focused on passing a balanced budget and addressing ongoing legislative priorities.”



POLITICSNATION WITH AL SHARPTON, 5/8/14, 6:27 PM ET

PA governor won't fight to keep voter ID

Explore: Election 2014, Elections, Pennsylvania, Tom Corbett, Voter Id and Voting Rights