

US Supreme Court allows Texas to implement anti-democratic voter ID law

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In an extraordinary ruling early Saturday morning, the US Supreme Court refused to intervene to prevent a new Texas voter identification law from being implemented and enforced in the upcoming mid-term elections.

The 2011 law, known as Texas Senate Bill 14 (or “SB 14”), created the strictest voter ID regime in the country when it went into effect in mid-2013. It is estimated that the law, which was previously struck down as unconstitutional, will prevent 600,000 eligible voters in Texas from casting ballots in November.

The nominal purpose of the law is to prevent voter fraud. This is a transparently spurious pretext, as only two individuals in Texas have been convicted of in-person voter fraud over the entire past decade. Instead, the law’s barely disguised purpose is to undermine the Voting Rights Act of 1965 and set a precedent for the disenfranchisement of hundreds of thousands of voters. Its short-term purpose is to enhance the electoral prospects of the Republican Party.

SB 14 requires each voter to present certain forms of photo identification in order to cast a ballot in an election. Under the law, only a very limited number of photo IDs are considered valid. Among the law’s most notorious provisions are the exclusion of government employee and student identification cards, and inclusion of concealed handgun permits.

The trouble and expense of obtaining a valid photo ID can be prohibitive. In many areas of the state, travel of 90 minutes or more is required. Many voters face fees of \$47 or more for the necessary documents, with some documents costing as much as \$680.

A disproportionate number of those disenfranchised by the law are African American or Hispanic. For their own electoral purposes, the Democratic Party and the Obama administration have campaigned against the law

and have sought to block it from going into effect.

The Texas law is plainly illegal and unconstitutional. The Voting Rights Act (VRA) of 1965, which emerged out of the civil rights movement, prohibits states such as Texas from implementing discriminatory laws designed to obstruct the exercise of voting rights. Section 2 of the Voting Rights Act prohibits any “voting qualification or prerequisite to voting or standard, practice, or procedure” that “results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color.”

In addition, the First and Fourteenth amendments to the Constitution have been long understood to prohibit obstruction of the right to vote. Finally, the Twenty-Fourth Amendment to the Constitution, ratified in 1964, prohibits all poll taxes (i.e., fees in connection with voting).

On October 9, Federal District Judge Nelva Gonzales Ramos struck down SB 14 in the case of *Veasey v. Perry*. The law, she wrote, “creates an unconstitutional burden on the right to vote, has an impermissible discriminatory effect against Hispanics and African-Americans, and was imposed with an unconstitutional discriminatory purpose.” She also ruled that the law constituted an unconstitutional poll tax. (See: Court decisions stop voter ID requirements in Wisconsin, Texas)

Judge Ramos’ 147-page ruling traced the long legacy of voter suppression and discrimination in Texas, which was a slave state until the defeat of the Confederacy in the Civil War. From 1895 to 1944, only whites could vote in primary elections. Until 1970, various state laws operated to make it next to impossible for illiterate citizens to vote. Until 1966, a poll tax was collected that was designed to disenfranchise poorer black voters who could not afford

it.

Each time its schemes were struck down as unconstitutional, Texas attempted to enact them again in different forms and under different pretexts. Judge Ramos noted, “In every redistricting cycle since 1970, Texas has been found to have violated the VRA with racially gerrymandered districts.”

On the basis of these findings, Ramos entered an injunction “barring enforcement of SB 14’s voter identification provisions,” and ordered that “Texas shall return to enforcing the voter identification requirements for in-person voting in effect immediately prior to the enactment and implementation of SB 14.”

Attorneys for the state of Texas appealed, and the Fifth Circuit Court of Appeals immediately issued an order preventing Judge Ramos’ injunction from going into effect until the state’s appeal could be decided on the merits.

In its written one-paragraph order on Saturday, the US Supreme Court did not give any reasons for its refusal to disturb the Fifth Circuit’s decision. Nor does the order indicate which of the justices made up the five-justice majority necessary to issue the decision.

The rulings by the Fifth Circuit and the Supreme Court have the practical effect of permitting Texas to enforce the law in the November 4 elections. After the Fifth Circuit makes a final decision on the merits of the case, the case will likely be reviewed again in the Supreme Court.

The Supreme Court’s order this week comes on the heels of its decision last year undermining the enforcement mechanism of the Voting Rights Act, which prompted states such as Texas to renew efforts to impose voter disenfranchisement laws that had been previously blocked. (See: The US Supreme Court’s dismantling of the Voting Rights Act)

Justice Ruth Bader Ginsburg, joined by Justices Sonia Sotomayor and Elena Kagan, dissented from the majority’s decision on Saturday, declaring that the Texas law was “enacted with a racially discriminatory purpose and would yield a prohibited discriminatory result.”

Ginsburg emphasized Judge Ramos’ detailed findings following a two-week trial, which the Fifth Circuit had largely ignored in favor of weighing the alleged disruptive impact of the ruling on Texas election procedures. The Fifth Circuit, Ginsburg wrote,

“showed little respect for this Court’s established stay standards.”

Justice Ginsburg formulated her opposition to the majority’s decision in terms of the further damage it would cause to public confidence in the political system. “The greatest threat to public confidence in elections in this case is the prospect of enforcing a purposefully discriminatory law, one that likely imposes an unconstitutional poll tax and risks denying the right to vote to hundreds of thousands of eligible voters.”



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