

Appellate court panel narrowly upholds Texas voter ID law

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A three-judge panel of the Fifth Circuit Court of Appeals, which reviews cases from federal courts in several southern states, last Friday narrowly reinstated Texas' recent modification to its reactionary voter identification law.

Each judge wrote a separate opinion in *Veasey v. Abbott*. Only one judge approved the modifications. A second agreed that the lower court ruling should be reversed, but on the technical ground that the modifications render the original lawsuit “moot,” and a new challenge should be filed. The third judge wrote a lengthy dissent condemning the original law and its modification as racially discriminatory.

The requirement that individuals must produce a specific form of photographic identification to cast ballots, under the guise of combating non-existent voter fraud, disenfranchises impoverished voters, who tend to vote Democratic. The original Texas law, considered the nation's strictest, requires voters to produce a driver's license, a concealed weapon permit, a passport, or one of four other listed forms of photographic identification, at the polls.

Thirty-two of fifty states require some form of identification to vote. In fifteen the identification must have a photograph. The list is growing as the result of Supreme Court decisions that have removed legal restrictions on voter suppression, especially the 2013 gutting of the Voting Rights Act.

In 2011, the Republican dominated Texas legislature enacted Senate Bill 14, claiming that its measures were necessary to combat “rampant” fraud despite a record of only two convictions for in-person voter fraud out of more than 20 million ballots cast. The law's challengers estimated the measure could prevent 600,000 eligible voters from casting ballots.

Federal District Judge Nelva Gonzales Ramos struck

down the law as intentionally discriminating against black and Latino citizens, a ruling upheld by an “*en banc*” ruling of the entire Fifth Circuit in 2016.

In response to that ruling, Texas enacted Senate Bill 5, creating a new hoop through which citizens without photographic IDs must jump—a sworn affidavit attesting that a “reasonable impediment” stood in the way of obtaining identification. The new law provides for felony charges if the signer is found to have lied on the affidavit.

Judge Ramos blocked the law after attorneys challenging the new law argued that the explicit threat of lengthy prison sentences would have a “chilling effect.” That threat is not theoretical. Last month, a Fort Worth, Texas, court sentenced 43-year-old Crystal Mason to five years imprisonment for casting a provisional ballot in the 2016 presidential election while on supervised release for a tax-fraud conviction. Mason claimed that she did not understand that she was then ineligible to vote. Her ballot was never counted.

For Friday's ruling, Judge Edith Jones, appointed by Ronald Reagan 33 years ago, wrote the lead opinion, finding that the lower court “abused its discretion” by enjoining the new law. Judge Jones labeled concerns over threats of criminal prosecution “wholly speculative,” adding that the Texas legislature “succeeded in its goal” of passing a new law “designed to cure all the flaws” of the original.

Judge Jones is an outspoken opponent of abortion rights and advocate for the death penalty, who, according to Wikipedia, has called executions a service to the condemned that allows them to make peace with God. She was investigated for a display of overt racism during a 2013 speech to the Federalist Society, which recruits and sponsors extreme conservatives as judicial nominees. She was exonerated when no recording

could be produced to corroborate witnesses who claimed she stated that “racial groups like African-Americans and Hispanics are predisposed to crime.”

Judge Patrick Higginbotham agreed that the lower court ruling should be reversed, but on the technical ground that the legal challenge to the original law was “mooted” by the modifications, and a new lawsuit must be filed to challenge Senate Bill 5. His concurring opinion seems sympathetic to the challengers, however, noting that Texas “cannot show that its hurried pursuit of a so recently arrived fear of voter fraud exists beyond the fantasy of political spin,” and therefore “its efforts can only be described in terms of race or the pursuit of political advantage.”

Judge Higginbotham concluded: “The right to vote remains fundamental and cannot be easily frustrated, whether it affects poor African American voters or poor Caucasian voters. That is the direction we ought to take.”

Judge James Graves, Jr., an Obama appointee, reacted passionately, titling his 35-page dissent: “A hog in a silk waistcoat is still a hog.” He called the original law “an unconstitutional disenfranchisement of duly qualified electors,” and the new one “is merely its adorned alter ego.”

The dissent reviewed the history of voter suppression and the “shifting arguments” Texas officials offered in defense of identification laws, concluding that the new law “merely carries forward the discriminatory strain of its predecessor, and for that reason it should be quarantined.”

Friday’s ruling will not be the last word if the entire Fifth Circuit decides to review the case “*en banc*,” as it did last time the issue came before it.



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