Texas ID Law Ruled to Breach Voters' Rights
Eckholm, ErikThe New York Times
08-06-2015

A federal appeals panel ruled Wednesday that a strict voter identification law in Texas discriminated against blacks and Hispanics and violated the Voting Rights Act of 1965 -- a decision that election experts called an important step toward defining the reach of the landmark law.

The case is one of a few across the country that are being closely watched in legal circles after a 2013 Supreme Court decision that blocked the voting act's most potent enforcement tool, federal oversight of election laws in numerous states, including Texas, with histories of racial discrimination.

While the federal act still bans laws that suppress minority voting, it has been uncertain exactly what kinds of measures cross the legal line since that Supreme Court ruling.

The Texas ID law is one of the strictest of its kind in the country. It requires voters to bring a government-issued photo ID to the polls. Accepted forms of identification include a driver's license, a United States passport, a concealed-handgun license and an election identification certificate issued by the State Department of Public Safety.

Wendy R. Weiser, the director of the democracy program at the Brennan Center for Justice at New York University School of Law, called the ruling "great news for voters in Texas and for the country."

"It does show the continuing relevance of the Voting Rights Act even in its weakened form," said Ms. Weiser, whose organization helped represent some of the plaintiffs in the suit.

"But it's bittersweet because we've now gone through a federal election with this discriminatory voting law in place."

The plaintiffs, including individual voters, civil rights groups and the Department of Justice, said it was discriminatory because a far greater share of poor people and minorities do not have these forms of identification and lack easy access to birth certificates or other documents needed to obtain them.

Student identifications, voter registration cards and utility bills are not considered acceptable proof of identity.

In a sweeping ruling in 2014, a federal district court in Texas agreed with the plaintiffs about the effect the law had on minority voters.

But it also said legislators had intentionally adopted a discriminatory law, a conclusion that could have led to a restoration of federal oversight over Texas voting laws.

Although the appeals court upheld the finding of discriminatory effect, the three-judge panel said the lower court must re-examine its conclusion that Texas acted with discriminatory purpose.

Texas could appeal to the full Fifth Circuit Court of Appeals in New Orleans or the United States Supreme Court.
In a statement issued Wednesday afternoon, Gov. Greg Abbott did not say whether the state would appeal.

But the governor did say, "Texas will continue to fight for its voter ID requirement to ensure the integrity of elections in the Lone Star State."

In a 147-page opinion issued in the fall of 2014 after a two-week trial, a district court judge, Nelva Gonzales Ramos, said the law "creates an unconstitutional burden on the right to vote" and blocked its enforcement.

She noted the lack of evidence that voter fraud was a threat and cited expert testimony that about 600,000 Texans, mainly poor, black and Hispanic, lacked the newly required IDs and often faced obstacles in obtaining them.

Texas appealed her decision to the Fifth Circuit, which, without deciding the issues, put the identification law back into effect, saying it would be too disruptive to change the rules so close to Election Day.

The appeals panel said Wednesday that because illegal intent to discriminate had not been established -- in passing the law, legislators declared an interest in preventing voter fraud -- the district court in Texas should seek ways to alter the voter law short of overturning it entirely. The state could, for example, reinstate the acceptance at the polls of certain forms of identification that may be more easily available.

Apparently referring to that part of the ruling, the Texas attorney general, Ken Paxton, said in a statement Wednesday that the decision was a "victory on the fundamental question of Texas' right to protect the integrity of our elections," adding that "our state's common sense voter ID law remains in effect."

But civil rights advocates focused on the court's decision to uphold Judge Ramos's finding that the ID law had a discriminatory effect, thus violating Section 2 of the federal Voting Rights Act.

The appeals court said it did not need to decide whether the law also violated provisions of the Constitution, like the 14th Amendment, and it rejected Judge Ramos's finding that it amounted to an illegal poll tax.

The evidence that the law violated Section 2 was relatively strong, said Justin Levitt, an elections expert at Loyola Law School in Los Angeles, because the racial difference in impact was striking.

Another case, in North Carolina, involves what some say are more subtle effects, and could provide a more telling test of the Voting Rights Act.

There, civil rights advocates and the Department of Justice are challenging cutbacks in a range of measures used disproportionately by minorities, including early voting and same-day registration and voting.

A second case in Texas, involving a challenge to the state's redistricting, could also set an important legal precedent.

In the Texas ID case, the Fifth Circuit said that Judge Ramos had used improper historical and other evidence to conclude that Texas had intended to discriminate and that the district court should "give further consideration" to the issue.

"This is a narrow but important victory coming on the eve of the 50th anniversary of the passage of the Voting Rights Act," wrote Richard L. Hasen, a law professor at the University of California, Irvine, and the editor of Election Law Blog.