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SUMMARY

On January 23, 2017, the United State Supreme court declined to hear an appeal from the government of Texas over its Voter ID Law, previously struck down as unconstitutional by a lower appellate court. The ruling comes three days after the President Trump administration's Department of Justice (DOJ). On Friday January 20, 2016, hours after his inauguration of 46th President of the United States, they asked for a delay in the case because of a change of leadership in the country. In 2014, Texas enacted some of the toughest voter ID laws in the country, requiring citizens to have a state issued ID present at the time of voting. Driver Licenses and gun permits were acceptable forms of ID; however, student IDs could not be used.

The Republican controlled Texas Legislature who argued that the new laws would prevent voter fraud and ensure integrity of the election process passed the law. However, the Democrats differed in their opinion and saw it as an attempt to suppress minority voter turnout. On Wednesday August 5, 2015, the United States Courts of Appeal for the Fifth Circuit struck down the Texas Voter ID law saying that it not only violated U.S. Voting Rights Act but it also had discriminatory effects on minority voters.

Though plaintiffs argued, the law would hit elderly and poorer voters, including minorities, hardest because they are less likely to have such identification; and while I believe the law was discriminatory in nature, I believe that everyone should have a basic government issued ID. Having said that, the court made the correct decision for the very reason I stated: the Republican-led Texas Legislature was well aware that the majority of citizens without government issued IDs are the elderly, poor voters including minorities.

THE TEXAS VOTER ID LAW

On May 27, 2011, there was somewhat of a seismic jolt in the Lone Star State of Texas...it could be argued that, an earthquake. The tremors for this began some five years prior in the Texas Legislature with the classic battle drawn squarely down partisan...bitter, bitter partisan lines. The Republican-controlled legislature said their motivation for enacting new sweeping voter ID laws was to combat what they perceived as widespread voter fraud. Democrats viewed the new laws as a deliberate attempt by the Republicans to disenfranchise roughly 600,000 minority voters, mainly Blacks and Hispanics. This law passed by the Legislature just in time for the 2012 Presidential Elections.

Not surprising, these new laws was challenged in federal court eventually reaching the United States Supreme Court. It was a strange ruling in that it was a temporary one, which allowed the law to remain in effect at least until after the Presidential Election. This is both a state and federal issue: it is a state issue in that it is a Senate bill that passed into law and challenged in two lower federal courts eventually landing in the Supreme Court.

After the voter ID law as passed by the Texas Legislature in June 2012, Congressman Marc Veasey, D-Fort Worth, in 2014 sued Governor Rick Perry and Texas Secretary of State John Steen in Federal Court. Six people joined Veasey as plaintiffs. United States Federal District Judge for the Southern District of Texas found the voter ID law unconstitutional and struck in down. On appeal in the Fifth Circuit Court of Appeals, the court stayed the case to allow it sufficient time to review the case after the 2014 Gubernatorial Elections.

The case arrived at the Supreme Court in which the court agreed with the Circuit Court and published a brief order that allowed the stay to remain in place until after the election, when the Circuit Court of appeals would have sufficient time to review the case. On Wednesday August 5, 2015, the Fifth Circuit Court of Appeals struck down the Texas voter ID stating that it violated Section 2 of the Voting Rights Act and found the law discriminatory in its effect. Texas has had a history of discriminatory voting laws beginning in 1865 after emancipation where African Americans were denied the right to vote on a regular basis by many methods including violence, including lynching, to the attempts to repeal the Poll Tax in 1963 to the present day case.

Texas Senate Bill 14

Texas Senate Bill 14 (SB14) was introduced on January 12, 2011 and was read for the first time on January 24, 2011. From the onset, it was a very contentious bill and the contents of the bill bitterly divided the Texas Senate down party lines. Governor Rick Perry signed this bill into law on May 27, 2011. The new law listed seven forms of ID that could be presented at the polls:

- Texas driver license issued by the Texas Department of Public Safety (DPS)
- Texas Election Identification Certificate issued by DPS
- Texas personal identification card issued by DPS
- Texas concealed handgun license issued by DPS
- United States military identification card containing the person's photograph
- United States citizenship certificate containing the person's photograph

➤ United States passport

Prior to the new law, in Texas voters voted with many forms of ID including their Voter Registration Card or their Driver Licenses, Passport and Texas Identification Card. The new requirements created a challenge and a burden to the poor and minority groups. “Based on Texas’ own data, 600,000 to 800,000 registered voters don’t have the government-issued ID needed to cast a ballot, with Hispanics 46 to 120 percent more likely than whites to lack an ID” (Berman, 2013). Many who did not have a driver license or a state issued ID, who previously voted with the Voter Registration Card, would either have to go through the process of gaining such IDs or forfeit their right to vote in elections? At the signing of the bill, Gov. Perry remarked that his law would help maintain the fairness in our electoral system in Texas. He compared the new requirements of needing a picture ID to vote with going down to the local H.E.B. grocery store to cash a check or getting a library card. Democrats of course in the Legislature did not see the rainbow-like picture the Governor painted; since 2005, they had the numbers in the Legislature and were able to block previous voter ID bills. Democrats felt that this bill would disenfranchise poor and minority voters who traditionally coincidentally vote Democratic.

The Democrats saw this bill as a way for the Republicans, who holds a two-thirds majority in the House, to gain an edge in the electoral process by enacting sweeping legislation that would make it more difficult to vote in the state of Texas.

This voter ID law, make no mistake, is harsh and rigid...more so than other such laws passed in other states. Students attending college in Texas can no longer vote with their student ID, though it is a picture ID. Students tend to register to vote in the city where their college is located; rejecting their student IDs as a valid form of ID to vote would again, suppress these votes to the advantage and benefit of the Republican Party. For those without a legal form of ID, for voting purposes are given a mere six days to produce a valid ID in order for their vote to count. Those voting without the proper form of ID were required to cast a provisional ballot, which is used to record someone’s vote when there is questions about their IDs. “Due to its history of discriminatory voting practices like poll taxes and literacy tests, Texas is one of nine states that, according to the Voting Rights Act, must first clear any significant election law changes with the U.S. Department of Justice” (Setiawan, 2011). Again, this is a very tough piece of legislation allowing only five forms of ID as valid to present at the polls.

While the voter ID law allows those without a valid ID to cast a provisional ballot, it also allows them to get an election identification certificate (EIC) from the Texas Department of Public Safety (DPS); however, eighty-one of the 254 counties in Texas do not have a DPS office. This again means that many would be disenfranchised. The signing of SB 14 presented a wonderful photo opportunity for Governor Perry and the Republican-led legislature; the true fight was about to be in the federal courts.

SB 14 AND THE FEDERAL JUDICIARY

In *State of Texas v. Eric H. Holder, Jr.*, (2012) a three-judge panel blocked the Texas voter ID law saying Texas failed to show how law would not harm the voting rights of African Americans, Hispanics and other minorities in the state. The panel also concluded that there was evidence to support the fact that the costs involved in getting the photo ID in order to vote would fall most profoundly on African Americans and Hispanic Voters. “Describing the law as the most stringent in the country, the unanimous decision by a three-judge panel marks the first time that a federal court has blocked a voter-ID law” (Horwitz, 2012). The main factor with Attorney General Holder involvement in this litigation is based on Texas’ history of discrimination. Holder referred to the voter ID law as a “poll tax.” Texas was under the provision of

Section 2 of the Voting Rights Act. Any changes the state proposes to their voting laws had to be approved by the Justice Department. Since Governor Perry did not seek approval, the Attorney General blocked the voter ID law; the State of Texas then sued Attorney General Holder.

In blocking the law, Attorney General Holder said the law endangered minority-voting rights. The judges agreed with the Attorney General and the Justice Department. "...among residents who lack other forms of acceptable identification, the burden of obtaining a state voter-ID certificate would weigh disproportionately on minorities living in poverty, with many having to travel as much as 200 to 250 miles round trip" (Horwitz, 2012). The three judges, David S. Tatel, a judge on the U.S. Court of Appeals for the District of Columbia Circuit appointed by President Bill Clinton, U.S. district judges Rosemary Collyer, appointed by President George W. Bush and Robert L. Wilkins appointed by President Barack Obama seemed to be particularly concerned with the additional financial burden the new law would put on the poor. Of particular concern was how this law would lead to their involuntarily skipping the electoral process during the next election cycle. "A law that forces poorer citizens to choose between their wages and their franchise unquestionably denies or abridges their right to vote" (Horwitz, 2012). The Texas Attorney General Greg Abbott appealed to the Supreme Court. However, because of this ruling, Texas could not enact this voter ID law for the November 2012 Presidential Election.

Voter ID Law goes to the Supreme Court

Marc Veasey, et al v. Rick Perry, on appeal from the Fifth Circuit Court of Appeals sought to block the voter ID law, given that the Appeals Court issued a stay to allow it sufficient time to review the case. Congressman Marc Veasey sued Governor Rick Perry after the Governor said that based on the Supreme Court's decision in *Shelby County* (2013) that the voter ID law could go into effect right away. In *Shelby*, in a 5-4 decision, the Supreme Court ruled that Section 4 of the Voting Rights Act was unconstitutional. Chief Justice John Roberts stated that Section 4 imposes restrictions that are no longer necessary based on the current conditions in the voting states in question. "Although the constraints this section places on specific states made sense in the 1960s and 1970s, they do not any longer and now represent an unconstitutional violation of the power to regulate elections that the Constitution reserves for the states" (Oyez). Section 4 applied to nine states including Texas.

The Federal District Court prior had blocked the law from going into effect after a nine day trial. On Saturday October 18, 2014, the Supreme Court, for the first time in thirty years, allowed a law constraining voting rights to stand, though on a temporary basis, to allow the Appeals Court time to review the decision by Federal District Judge Nelva Gonzales Ramos in Corpus Christi. The judge ruled that the law was unconstitutional. This Saturday order issued by the majority gave no explanation for their actions. The apparent 6-4 decision did not explain how the Justices voted; however, we know that Justice Ruth Bader Ginsburg wrote a dissenting opinion of more than six pages, joined by Justices Elena Kagan and Sonia Sotomayor. Justice Ginsburg dissenting opinion ran parallel to the Federal Judge in Texas, viewing the law as a poll tax, which was unconstitutional and violated the Twenty-Fourth Amendment because of the fees required to get a valid ID. "The greatest threat to public confidence in elections in this case," Ginsburg wrote, "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" (Denniston, 2014). The rationale the Appeals Court took in their stay was that it was too close to the November elections and that there was not sufficient time to the parties to present arguments and even less time for the court to review the cause sufficiently to render a verdict before the November elections. It is likely that the Supreme Court use the same rationale to allow the stay to remain in a temporary manner until the elections were over.

The Appeals Court Strikes Down Voter ID Law

To review, the Texas Legislature passed SB 14 in 2011. Attorney General Eric Holder successfully blocked the voter ID law 2012. Congressman Veasey sued in 2014 in Federal District Court in Texas, which view the law as unconstitutional; Texas appealed to the Fifth Circuit, which issued a stay. The stay was appealed to the Supreme Court who agreed to leave the stay in place until after the November 2014 elections: the rationale of the Circuit Court was that it needed time to review the case, which the Supreme Court agreed.

Voter Fraud In Texas?

In the state of Texas, The Republican Party has consistently claimed voter fraud in every election cycle despite the fact that they hold a super majority in the Legislature and they hold all statewide office. Given their domination in this red state, their logic in attempting to enact such a hard voter ID law makes little sense. While the claims of voter fraud persists, there has been little prosecution of these alleged illegalities, especially given the fact that the governor and attorney general are both Republicans and are the very ones capable of bringing those accused of voter fraud to justice.

In 2012, students and professors at Arizona State University's Walter Cronkite School of Journalism conducted an analysis of voter fraud in Texas. Their conclusion: it is virtually non-existent. "A News21 analysis of 2,068 alleged election-fraud cases since 2000 shows that while fraud has occurred, the rate is infinitesimal" (Bush, 2015). Let us suppose that there are voter fraud going on in this the state. How effective would the voter ID law be in stopping these illegal acts? To answer this question, we need only to look at the individual who has been the vocal champion of such voter fraud in the Lone Star State. Former Attorney General, Greg Abbott, now Governor, made it his mission to uncover voter fraud in Texas. As a candidate for Governor, he made it a major part of his platform.

In thirteen years, only two cases were identified as fraud that the voter ID laws would have prevented; basically that is one out of every 18.7 million votes cast in the state during his tenure in office. "In other words: Fraud is a major threat to elections and voter ID is the way to stop it. But based on the evidence provided by Abbott's own team, both notions are flatly false" (Roth, 2014). In 2014, the Abbott Campaign was asked by MSNBC for specific cases involving voter fraud in Texas. Roughly, six cases were cited by the campaign: of the six, the voter ID law would have stopped two. These two cases involved individuals who are not dangerous or were part of any coordinated, organized campaign to commit voter fraud. Jack Crowder was charged with a misdemeanor and paid a \$200 fine for using his dead father's voter registration card; Lorenzo Almanza used his brother's voter registration card to vote: his brother was in prison. Almanza as a result was sentenced to two years in prison. The other four cases were irrelevant and the voter ID law would not have played a role in these cases. The Abbott campaign could point to no other cases to justify enacting the voter ID law or how this law would prevent voter fraud.

THE CURRENT STATE OF THE VOTER ID LAW

On January 23, 2017, the United States Supreme Court declined to hear an appeal from the government of Texas over its Voter ID Law. Texas was seeking to restore the controversial voter ID law, which ruled the law was unconstitutional by the Fifth Circuit Court of Appeals in New Orleans. In their brief, Chief Justice John G. Roberts Jr. gave no specific reasons for refusing to hear the appeal. The Chief Justice however, indicated that the Supreme Court remains free to consider the case once all issues are resolved by the lower courts.

Previously, Democrats and The Justice Department welcomed and celebrated the decision by the Fifth Circuit Court of Appeals. The Justice Department argued that the law directly discriminates against minority voters. However, Texas Governor Greg Abbott signaled that the celebration of the ruling might be short lived, as it will not prevent his administration from fighting to keep the voter ID law in place. The Governor continues to insist that voter fraud is ongoing and that it is important to keep fighting to ensure honest and fair elections in Texas. The Court of Appeals sent the case back to Federal District Judge Nelva Gonzales Ramos in Corpus Christi to answer the question and show how the voter ID law was enacted specifically with a discriminatory intent. Texas appealed to the U.S. Supreme Court, which was not successful...for now. The case was sent back to the lower courts. Both the Supreme Court and the Court of Appeals will more than likely resist taking the case until the District Court establishes whether the law was enacted with discriminatory intent.

Future Trends and Policy

The future and trends in this issue depends heavily on the analysis of the Federal District Court. The Appeals Court specifically challenged the reasoning and the conclusion of the lower court that the law had a discriminatory intent; further, the Appeals Court also was not convinced of the argument presented by the District Court as to the intent of the Legislature in passing SB 14. The Appeals Court asked that "proper legal standards and evidence" in its review of its prior ruling and its review of the case in general.

There is cause to be optimistic about the future of this ruling in that Texas' voter ID law may be deemed invalid and unconstitutional. The very conservative Court of Appeal could have upheld the law; however, they sent the case back to the District Court for further work on their analysis and to answer this key question: what was the intent of the Legislature in passing this law? Given the fact that the Republicans have a super majority in the Legislature, and is currently in session, in the event that the voter ID law remains invalid, the Legislature could enact their "Plan 2" in their quest to fight "voter fraud." It of course would remain to be seen what "Plan 2" would look like. However, until we receive a new ruling from the District Court, we will remain on hold. In addition, given the fact that our Legislature meets in odd number years, the Republicans have ample time to revise or develop a new strategy. Further, with a Republican president currently in the White House, we must wait to see what position the President Trump's Justice Department takes on the challenge to the Texas Voter ID law.

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