

FEDERALISM IN Action

Voter Identification

Texas spent the decades following the Civil War passing a variety of laws attempting to disenfranchise minority voters and undermine the Fifteenth Amendment. To counter this discrimination, the federal Voting Rights Act of 1965 included a provision in which any change in election laws had to be precleared—or approved in advance—by the U.S. Department of Justice to ensure that it had neither the intent nor the effect of disenfranchising minorities. This clearance requirement ended in 2013 after a ruling by the U.S. Supreme Court. On the same day the Supreme Court handed down its decision, Texas declared that its recently passed voter identification (ID) law, which had been denied preclearance by the federal government, would take immediate effect.ⁱ The Texas voter ID law, which is considered one of the strictest in the country, requires voters to produce one of a few approved forms of identification at the polls in order to vote. Driver's licenses, state ID cards, passports, and concealed handgun licenses are approved, but student ID cards, even those issued from a state university, are

not. The approximately 600,000 Texans that lack approved identification can obtain a free identification, but they still have to pay for the documents necessary to acquire the card.ⁱⁱ

For many in Texas having to get proposed changes in election laws precleared by the national government rankled; and it was a question of federalism. Texas authorities applauded the abolition of the preclearance requirement, which then governor Rick Perry described as “a clear victory for federalism and the states. Texas may now implement the will of the people without being subject to outdated and unnecessary oversight and the overreach of federal power.”ⁱⁱⁱ Moreover, Republicans in the state argued that the voter ID law was necessary to address voter fraud.

Opponents of the voter ID law argued that it disproportionately affected minority voters, who are less likely to have one of the approved forms of identification. For those Texans, critics have charged that the law acts as a poll tax. Moreover, opponents suggest that voter fraud is extremely rare, with fewer than three cases for every 1 million votes cast.^{iv} Opponents worry that voter ID laws will keep people from the polls. A recent study by the University of Houston and Rice University found that in a 2014 congressional election, the Texas voter ID law, through misunderstanding and misinformation, suppressed the vote even among Texans who possessed approved identification.^v In 2016 the U.S. Fifth Circuit Court of Appeals ruled that Texas's voter ID law violated the Voting Rights Act. The court found that the small number of acceptable IDs and the “lackluster educational efforts”

by the state regarding the new requirement created excessive burdens on Texas voters.

^{vi} The court did not strike down all voter ID laws but instead ordered Texas to fix them.

- How can Texas weigh the possibility of voter fraud against potential disenfranchisement of voters?
- What changes should the state adopt to its current voter ID law?
- When should the federal government get involved in a state's election laws?

i Greg Abbott, “Statement by Texas Attorney General Greg Abbott,” June 25, 2013, <https://texasattorneygeneral.gov/oagnews/release.php?id=4435> (accessed July 28, 2016).

ii Jim Malewitz, “Texas Voter ID Law Violates Voting Rights Act, Court Rules,” *Texas Tribune*, July 20, 2016, <https://www.texas-tribune.org/2016/07/20/appeals-court-rules-texas-voter-id> (accessed July 28, 2016).

iii Todd Gillman, “Supreme Court Strikes Down Formula That Puts Heightened Scrutiny on Texas under Voting Rights Act; Voter ID Law Could Go into Effect Soon,” *Dallas Morning News*, June 25, 2013.

iv Ross Ramsey, “Analysis: Scant Evidence for Abbott's ‘Rampant’ Voter Fraud,” *Texas Tribune*, March 15, 2016, <https://www.texastribune.org/2016/03/15/analysis-scant-evidence-abbott-rampant-voter-fraud> (accessed July 28, 2016).

v Bill Hobby, Mark P. Jones, Jim Granato, and Renée Cross, “The Texas Voter ID Law and the 2014 Election: A Study of Texas's 23rd Congressional District,” White Paper from University of Houston Hobby Center for Public Policy and Rice University's Baker Institute for Public Policy, August 2015.

vi Malewitz, “Texas Voter ID Law Violates Voting Rights Act, Court Rules.”