



Voting Rights Ruling Could Open Lawsuit Floodgates

By: Frank James – June 25, 2013

It didn't take long after the news broke about the Supreme Court's 5-to-4 decision tossing out a key piece of the Voting Rights Act for the fears of voting advocates, or the hopes of VRA critics, to be realized.

Texas Attorney General Greg Abbott said now that the Supreme Court ruled as unconstitutional the method Congress established for choosing which states and jurisdictions need to get approval from the Justice Department for voting revisions, his state would move ahead on a few fronts.

"With today's decision, the State's voter ID law will take effect immediately," Abbott said in a statement. "Redistricting maps passed by the Legislature may also take effect without approval from the federal government."

After the *Shelby County v. Holder* decision, voting-rights advocates expect similar moves from states, counties and local governments that until now were constrained by the requirement that they get so-called pre-clearance from the Justice Department before instituting such changes.

"The two main things that are going to happen, we're going to expect battles across the country with attempts to revive discriminatory voting changes that were previously blocked or deterred," said Wendy Weiser, director of the Democracy Center at NYU's Brennan Center.

"The other big thing that's going to happen is an effort to put together new legislation in Congress to replace that which we lost today."

In anticipation of Tuesday's decision, the Brennan Center issued a report, titled "If Section 5 Falls: New Voting Implications." The report provides a good guide to what's likely to happen in the nine states covered by that section. The Brennan Center also has a useful roundup of new voting legislation that follows efforts to restrict or expand access to voting.

The high court left intact Section 5 of the historic law, first passed in 1965 to ameliorate voting disparities caused by decades of racist practices that reduced black voting participation and power. That section gives the Justice Department the power to stop jurisdictions from making voting changes that the federal government finds discriminatory to minority voters.

But in striking down Section 4 of the law, which lays out which states and localities must submit to pre-clearance, the Supreme Court said Congress must update the selection process to reflect the strides made in some states with histories of voter discrimination. (*The New York Times* has a fascinating series of maps showing which states and jurisdictions could be affected under different criteria.)

"[T]he Supreme Court restored a measure of constitutional order to America. Based on 40-year-old data showing racial disparities in voting that no longer exist, this provision subjected a now-random assortment of states and localities to onerous burdens and unusual federal oversight," wrote Ilya Shapiro, editor-in-chief of the *Cato Supreme Court Review*. "Recognizing that the nation has changed, the Court aptly ended the extraordinary intrusion in state sovereignty that can no longer be justified by the facts on the ground."

But critics contend that by ruling Section 4 unconstitutional, the conservative majority of justices had gutted the voting act, as the court scrapped Congress' means of determining which jurisdictions required pre-clearance.

Congress overwhelmingly approved the the law's reauthorization in 2006. But you don't have to be a full-time Congress watcher to know that its partisan polarization has made it dysfunctional to the point where little legislation of substance gets done.

Still, voting-rights advocates put on a brave face. They claimed to take encouragement in the lopsided support for the act's 2006 reauthorization.

"We have a different Congress right now but we have no reason to believe that that support is still not there on a bipartisan basis," NYU's Weiser said. "Congress just needs to step in in a reasoned bipartisan way and put something else in place before the next federal election."

In case Congress didn't bite on that appeal for another bipartisan moment, voting and civil rights advocates made a play to congressional pride. Were lawmakers really going to let the Supremes usurp the legislature's job?

"Today's decision, obviously a blow to American democracy, was also a slap at congressional authority and power," said Wade Henderson, president of the Leadership Conference on Civil and Human Rights, during a teleconference with reporters.

"And that the constitutional prerogative and power of Congress could be so easily overturned by a Supreme Court choosing to sit in the role that Congress usually plays, and that Congress would roll over and simply accept that repudiation, we think is almost unthinkable."

It was hard to know Tuesday how congressional Republicans planned to respond to the Supreme Court decision. They mostly maintained silence on the issue.

It seemed safe to say, however, that the Supreme Court did Republican congressional leaders no favors. They now face yet another issue, like immigration, that pits their desire to have their party compete more effectively for minority voters against the view of some in their party that the Voting Rights Act was an "entitlement" or a violation of

states' rights. The Supreme Court's decision only adds to the challenges facing the party's congressional leaders.

There was a palpable sense of loss in places where the act proved effective in recent years in stopping voting changes that could have harmed the registration and participation of minority voters.

Daniel Smith, a political science professor at the University of Florida, said of the act's impact in his state: "We saw in 2011 and 2012 alone Section 5 used to challenge redistricting in the state. We saw it used to challenge the reduction of early voting days as well as regarding making it more onerous for community groups to register voters. It's a monumental loss if Congress does not act to come up with a new formula to protect [voters from] discrimination in elections."

Smith suggested that some good could come out of the Supreme Court's decision. "I think this is a wonderful opportunity for Congress to come up with a new coverage formula that will make sure that voting rights are protected in the 21st century. And we'll see who's courageous on both sides of the aisle to come up with new guidelines. Because, certainly as the chief justice said in his opinion, we're not out of the woods with respect to racial discrimination."

But until Congress acts, voting-rights advocates expect the way forward is to file many more lawsuits, an expensive and time-consuming process that isn't an adequate substitute for Justice Department pre-clearance, say some voting-rights experts. One, there aren't enough resources. Two, many times the problematic voting changes aren't discovered until it's too late.

"Instead of being stopped before they go into effect, they will be put into effect and will only be stopped if somebody goes to court," Weiser said.