



Voting rights cases may be headed back to Supreme Court

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The Supreme Court's decision last year eliminating a barrier against voting procedure changes in mostly Southern states came with a caveat: Chief Justice John Roberts warned that the Voting Rights Act still included a "permanent, nationwide ban on racial discrimination in voting."

Now federal courts from Texas to Wisconsin are on the verge of deciding whether Roberts was right — or if what remains of the 1965 law after the Supreme Court's 2013 ruling is less able to stop states from making it harder to vote.

An appeals court hearing Friday in the Wisconsin case, following a two-week trial in a Texas district court, might point the way back to the Supreme Court. Cases in North Carolina and Ohio also could be headed that way.

Those states and others have made voting more difficult in recent years to combat what they claim are instances of voter fraud. Texas imposed strict new photo identification rules hours after the Supreme Court ruling. North Carolina cut back on early voting, same-day registration and provisional balloting.

They were among 15 states freed in whole or in part from Section 5 of the Voting Rights Act, which requires states with a history of discrimination to clear any changes with the Justice Department. The high court's decision in *Shelby County v. Holder* struck down the list of states dating back a half century.

Wisconsin and Ohio were not Section 5 states. But Wisconsin's list of restrictions and Ohio's cutback on early voting are targets for the next-best defense against discrimination: Section 2, which puts the burden of proof on victims to prove racial discrimination in voting once changes have been enacted.

"This is a test for how strong Section 2 can be, how strong a bulwark it's going to be against voting discrimination going forward," says Wendy Weiser of the Brennan Center for Justice at New York University School of Law. "I think it is highly likely that one or more of those cases will end up before the U.S. Supreme Court at some point."

Since the 2010 elections, 22 states have enacted new restrictions on voting, according to the Brennan Center. In 15 of those states, the upcoming federal elections will be the first to test their impact. Lawsuits have been filed in seven of them, including three — North Carolina, Texas and Arizona — formerly covered under Section 5.

Legislation that includes a new formula to determine which states are covered is stalled in Congress. That leaves Section 2 of the civil rights law as the main line of defense against voting restrictions, usually imposed by Republican legislatures. But challenging that provision can prove costly and time-consuming.

"Litigation under Section 2 ... was an inadequate substitute for pre-clearance in the covered jurisdictions," Justice Ruth Bader Ginsburg said in her dissent from the court's 5-4 ruling last year. It "places a heavy financial burden on minority voters."

The Wisconsin case on Friday will become the first in the wake of that decision to be argued before a federal appeals court. The American Civil Liberties Union and the Advancement Project, a civil rights group, contend that the law jeopardizes the votes of hundreds of thousands of residents who lack the proper ID — particularly racial minorities, seniors, students and people with disabilities.

Federal District Judge Lynn Adelman ruled in April that the law was unconstitutional. He based his decision on the Supreme Court's 2008 decision in an Indiana case that actually upheld a different photo ID requirement.

"No litmus test ... neatly separates valid and invalid election laws," Adelman said. "The Supreme Court has adopted a balancing test that courts must apply on a case-by-case basis." In Wisconsin's case, he added, "the photo ID requirement results in the denial or abridgment of the right of black and Latino citizens to vote on account of race or color."

Even though Wisconsin was not covered by Section 5, the test of Section 2's corrective powers is important to the nine states and portions of six others that previously had to get federal approval to make voting changes.

"There used to be an additional weapon," says Rick Hasen, an election law specialist at the University of California-Irvine. "That additional weapon is gone, so now everybody's in the same boat."

Ilya Shapiro, a senior fellow in constitutional studies at the libertarian Cato Institute, says it may turn out that Section 2 works as intended and proves Section 5 unnecessary.

The lawsuits "are vindicating, inadvertently, the court's ruling in *Shelby County*," Shapiro says. "This is the system working. The courts are moving fairly quickly. And these groups seem to be well-funded."

As the 7th Circuit prepares for oral arguments in the Wisconsin case Friday, legal battles also are ongoing in the 4th, 5th and 6th Circuits:

- **North Carolina:** A federal district judge last month refused to block provisions of the new law that are slated to be in effect this November. The appeal of that ruling will be argued later this month. The new photo ID rules are not scheduled to take effect until 2016.

- **Texas:** A two-week trial in federal district court concludes this week. The law initially was blocked in 2012 by a federal district court in Washington, but the Supreme Court's ruling gave it new life. In addition to challenging the law, voting rights groups are seeking to have Texas put back under pre-clearance rules.

- **Ohio:** A federal district judge ruled last week that cuts to early voting schedules must be restored for the upcoming elections. The state has appealed that decision.

Despite those challenges to state laws, voting rights groups say they can't combat every change in procedures enacted by local governments, from moving polling places and district lines to providing inadequate registration and translation services in minority communities.

"There is a war on voting ... politicians are manipulating the voting systems for their own personal gain," says Katherine Culliton-Gonzalez, director of voter protection at the Advancement Project. "We're not going to be able to litigate our way out of this."