

## **Major Voting Litigation That Could Impact Voting Access**

States across America are in the midst of major battles over voting rights that have stretched several years. In last year's election, citizens in [14 states faced new restrictions](#) for the first time in a presidential race. Before the Supreme Court gutted the protections of the Voting Rights Act, courts stepped in ahead of elections to block or ease new voting restrictions. This map details the cases we are currently watching that could impact voting access moving forward.

### **Alabama**

[League of Women Voters v. Newby](#) (documentary proof of citizenship)

U.S.D.C. for the District of Columbia, 1:16-cv-00236

U.S.C.A. for the District of Columbia, 16-5196

In February 2016, the Brennan Center, Stroock & Stroock & Lavan LLP, and Kirkland & Ellis LLP filed suit on behalf of the League of Women Voters and state affiliates. The suit challenges letters sent by Election Assistance Commission Executive Director Brian Newby in January 2016 to the secretaries of state of [Alabama](#), [Georgia](#), and [Kansas](#). Without explanation, he allowed the three states to require that applicants using the federal voter registration form provide documentary proof of citizenship.

The suit asserts that Newby lacked the authority to make this decision, and that issuing the letters violated both EAC policy and federal law. On June 29, the district court ruled that Alabama, Georgia, and Kansas could implement their proof of citizenship requirements for the 2016 election. Plaintiffs appealed this decision to the D.C. Circuit Court of Appeals.

**LATEST NEWS:** On February 24, 2017, the district court remanded the matter to the EAC. Judge Richard Leon instructed the Commission to determine whether Executive Director Newby had authority to allow the three states to require proof of citizenship on the federal form. The preliminary injunction remains in place.

[Greater Birmingham Ministries v. State of Alabama](#) (voter id)

U.S.D.C. for the Northern District of Alabama, 2:15-cv-02193

In December 2015, Greater Birmingham Ministries and the Alabama NAACP filed suit challenging Alabama's photo voter ID law. They argue that the state's photo ID law, which allows election officials to vouch for the identity of a voter without ID, has a disproportionate impact on minority voters in violation of the Voting Rights Act and the U.S. Constitution.

**LATEST NEWS:** The court denied plaintiffs' request for a preliminary injunction and the law was in effect for the November 2016 election. A trial has been set for September 2017.

## **Arizona**

[\*Feldman v. Arizona\*](#) (polling place reductions and mail-in ballot collection)

U.S.D.C. for the District of Arizona, 2:16-cv-01065

U.S.C.A. for the Ninth Circuit, 16-16698

In April 2016, the Democratic Party and the presidential campaigns of Hillary Clinton and Bernie Sanders sued Arizona, alleging that an insufficient number of polling places in the March 2016 presidential primary disenfranchised minority voters, in violation of Section 2 of the Voting Rights Act and the U.S. Constitution. Voters waited in hours-long lines to vote in Maricopa County after the county cut the number of polling places by 85% since 2008. The suit also challenges Arizona's restrictions on collecting and submitting the mail-in ballots of other voters.

In September 2016, plaintiffs announced that they had settled part of the suit as it related to polling place closures.

A parallel suit – [\*Huerena v. Reagan\*](#), CV2016-00789 – was filed in state court in June 2016 alleging violations of the Arizona Constitution and state law. On October 19, the parties reached an agreement under which Maricopa County will institute a Wait Time Reduction Plan.

**LATEST NEWS:** On September 23, 2016, the district court denied plaintiffs' request to preliminarily enjoin Arizona's restrictions on mail-in ballot collection. On November 4, the en banc Ninth Circuit Court of Appeals issued a preliminary injunction that would have halted Arizona's restrictions on mail-in ballot collection for November's election. Arizona sought emergency relief from the Supreme Court, which on November 5 stayed the Ninth Circuit's injunction, meaning that the restrictions on mail-in ballot collection were in place for the election.

As of May 2017, proceedings in the district court are ongoing.

## **Florida**

[\*League of Women Voters of Florida v. Scott\*](#) (voter registration)

U.S.D.C. for the Northern District of Florida, 4:16-cv-633

On October 11, 2016, the League of Women Voters of Florida sued the state's governor and secretary of state for failure to extend the voter registration deadline in the face of Hurricane Matthew. The League of Women Voters of Florida argued that this decision violated the National Voter Registration Act, which mandates that states requiring voters to register give every eligible applicant the opportunity to obtain and submit a valid voter

registration form during the entire period for which registration activity normally occurs up to 30 days before the election or later. The League sought a preliminary injunction ordering that Floridians could register up until October 18, to make up for the time during which many residents were evacuated, county offices were closed, and mail was not operational.

At a hearing held on October 12, 2016, the federal district court ordered Florida to extend its voter registration deadline to October 18. This came after an earlier order extending the deadline by one day, from October 11 to October 12.

This case was consolidated with a related lawsuit, [Florida Dem. Party v. Scott](#), No. 4:16-cv-626.

**LATEST NEWS:** On October 18, the Florida Democratic Party filed a motion to enforce the October 12 order with additional measures out of concern that some registrations would not be processed in time for the start of early voting. At a hearing on October 20, Judge Walker issued an order denying that motion.

## **Georgia**

[League of Women Voters v. Newby](#) (documentary proof of citizenship)

U.S.D.C. for the District of Columbia, 1:16-cv-00236

U.S.C.A. for the District of Columbia, 16-5196

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The suit asserts that Newby lacked the authority to make this decision, and that issuing the letters violated both EAC policy and federal law. On June 29, the district court ruled that Alabama, Georgia, and Kansas could implement their proof of citizenship requirements for the 2016 election. Plaintiffs appealed this decision to the D.C. Circuit Court of Appeals.

**LATEST NEWS:** On February 24, 2017, the district court remanded the matter to the EAC. Judge Richard Leon instructed the Commission to determine whether Executive Director Newby had authority to allow the three states to require proof of citizenship on the federal form. The preliminary injunction remains in place.

*Georgia State Conference of the NAACP, et al. v. Kemp*

U.S.D.C. for the Northern District of Georgia, 1:17-cv-1397

In April 2017, voter registration groups and civil rights advocates filed a suit challenging the voter registration deadline established for the Sixth Congressional District special election runoff. Under Georgia law, voters needed to have registered prior to the original election, months before the June runoff. The challengers argued that this violated the National Voter Registration Act's requirement that voters be required to register no earlier than thirty days prior to an election.

**LATEST NEWS:** On May 4, 2017, a district court ruled in the challengers' favor, extended Georgia's voter registration for Sixth District runoff.

## **Kansas**

[\*Fish v. Kobach\*](#) (documentary proof of citizenship)

U.S.D.C. for the District of Kansas, 2:16-cv-02105

U.S.C.A. for the Tenth Circuit, 16-3147

In February 2016, the ACLU brought suit on behalf of affected would-be voters alleging that Kansas violated the National Voter Registration Act by requiring Kansans who attempt to register to vote while applying for or renewing a driver's license to produce documentary proof of citizenship. In May 2016, the trial court ordered Kansas to register thousands of eligible voters who had been kept off the rolls because they did not provide documentary proof of citizenship at the DMV. Kansas appealed this decision to the Tenth Circuit.

On September 30, 2016, the Tenth Circuit upheld the district court's ruling. The Tenth Circuit's decision came one day after plaintiffs and the secretary of state's office reached an interim agreement for the November elections, under which voters who registered at the DMV or with a federal form without providing documentary proof of citizenship were allowed to vote a regular ballot.

**LATEST NEWS:** As of May 2017, the litigation remains ongoing.

[\*League of Women Voters v. Newby\*](#) (documentary proof of citizenship)

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U.S.C.A. for the District of Columbia, 16-5196

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The suit asserts that Newby lacked the authority to make this decision, and that issuing the letters violated both EAC policy and federal law. On June 29, the district court ruled that Alabama, Georgia, and Kansas could implement their proof of citizenship

requirements for the 2016 election. Plaintiffs appealed this decision to the D.C. Circuit Court of Appeals.

**LATEST NEWS:** On February 24, 2017, the district court remanded the matter to the EAC. Judge Richard Leon instructed the Commission to determine whether Executive Director Newby had authority to allow the three states to require proof of citizenship on the federal form. The preliminary injunction remains in place.

[\*Brown v. Kobach\*](#) (documentary proof of citizenship | dual registration)  
Third Judicial District, Shawnee County District Court, 2016-CV-000550

In July 2016, the ACLU brought suit on behalf of affected voters alleging Kansas violated state law by establishing a dual registration system that would prohibit certain voters registered at the state Division of Vehicles or with the federal voter registration form from voting in state and local elections. The same month, the court ordered the state to temporarily allow these Kansans to vote in state and local elections and in September the court extended this order through the November 2016 elections.

**LATEST NEWS:** On November 4, 2016, the court permanently blocked the dual registration system.

## **North Carolina**

[\*North Carolina NAACP v. McCrory\*](#) (voter id | lead case)  
U.S.D.C. for the Middle District of North Carolina, 1:13-cv-00658  
U.S.C.A. for the Fourth Circuit, 16-1468

In August 2013, the U.S. Department of Justice, affected voters, and voter advocate organizations filed suit alleging that North Carolina's 2013 restrictive omnibus elections law violates the U.S. Constitution and the Voting Rights Act. The omnibus law eliminated same day registration, reduced early voting opportunities, created a photo ID requirement, and imposed other restrictive changes.

In June 2015, on the eve of the trial, North Carolina amended its law to allow voters without photo ID to swear to a reasonable impediment to obtaining ID and vote using a regular ballot. A trial on the other restrictive portions of the law was held in July 2015. A second trial on the photo ID requirement was held in January 2016. In April 2016, the trial court upheld all of the challenged provisions, including the modified photo ID requirement. Plaintiffs appealed to the Fourth Circuit Court of Appeals.

In July 2016, the Fourth Circuit Court of Appeals ruled that the law was passed with racially discriminatory intent, in violation of Section 2 of the Voting Rights Act and the Constitution. The court blocked all the challenged provisions. The court's majority said that allowing a voter without ID to cast a provisional ballot after claiming a "reasonable impediment" to obtaining one of the accepted forms was insufficient to cure the law's harm.

North Carolina went to the Supreme Court for emergency relief staying the Fourth Circuit's decision in advance of the election. On August 31, the Supreme Court issued a split decision, with four justices voting to grant the stay and four justices voting to deny it. A tie left the Fourth Circuit's decision in place, which meant North Carolina's restrictive law was not enforced during the November 2016 elections.

There is also a state court case challenging the photo ID law on state constitutional grounds – [Currie v. North Carolina](#), 13CV001419.

**LATEST NEWS:** In December 2016, North Carolina [sought](#) Supreme Court review of the case. On February 21, 2017, the newly elected North Carolina attorney general, acting on behalf of the State and the newly elected governor, moved to dismiss the petition for Supreme Court review. Members of the North Carolina General Assembly objected to the dismissal and [moved](#) to be added as a petitioner in the case.

On May 15, 2017, the Supreme Court [denied](#) review in the case, leaving the Fourth Circuit's ruling in place.

## **North Dakota**

[Brakebill v. Jaeger](#) (voter id)

U.S.D.C. for the District of North Dakota, 1:16-cv-08

In January 2016, seven Native American plaintiffs represented by the Native American Rights Fund filed suit under the Voting Rights Act and the U.S. and North Dakota Constitutions challenging the state's strict photo ID law, arguing it disproportionately denies Native American citizens the right to vote. On August 1, 2016, a federal trial court issued a preliminary injunction ordering North Dakota to provide a "fail-safe" option for voters without photo ID if it intends to enforce the ID requirement.

**LATEST NEWS:** On September 20, 2016, the district court ordered that voters without ID be allowed to vote a regular ballot in in the November election upon executing a Voter's Affidavit.

In April 2017, North Dakota approved a revised voter ID law, which critics warned did not fully address the concerns raised by the court in *Brakebill*.

## **Ohio**

[NE OH Coalition for the Homeless v. Husted](#) (absentee and provisional balloting)

U.S.D.C. for the Southern District of Ohio, 2:06-cv-00896

U.S.C.A. for the Sixth Circuit, 16-3691

Plaintiffs sued over two Ohio laws, SB 205 and SB 216, which provide for the invalidation of absentee and provisional ballots when voters fail to completely fill out the envelope information in a way that conforms to the information in the state's voter

registration database. In June 2016, the trial court enjoined these portions of the laws as violations of Section 2 of the Voting Rights Act and the Constitution. Ohio appealed this decision to the Sixth Circuit.

In September 2016, a divided Sixth Circuit panel voted 2-1 to reverse much of the district court's decision, particularly as it related to provisional ballots. The appellate court denied plaintiffs' request for en banc review of this decision. On October 31, the Supreme Court denied plaintiffs' request for an emergency stay of the Sixth Circuit's decision.

**LATEST NEWS:** In March 2017, the plaintiffs petitioned the U.S. Supreme Court to review the case.

## Texas

[Veasey v. Abbott](#) (voter id | lead case)

U.S.D.C. for the Southern District of Texas, 2:13-cv-00193

U.S.C.A. for the Fifth Circuit, 14-41127

U.S. Supreme Court, 16-393

In September 2013, the Brennan Center, Lawyers' Committee, and co-counsel filed suit challenging Texas's strict photo voter ID law on behalf of the Texas State Conference of the NAACP and the Mexican American Legislative Caucus of the Texas House of Representatives. The suit challenged the photo ID law as discriminatory against African-American and Hispanic voters and a denial of the right to vote under the Voting Rights Act, U.S. Constitution, and Texas Constitution. It was soon consolidated with similar actions filed by the U.S. Department of Justice and affected Texas voters.

After a trial in September 2014, the trial court struck down the law as an unconstitutional burden and a violation of the Voting Rights Act. Texas appealed this decision to the Fifth Circuit and, in July 2016, the full Fifth Circuit Court of Appeals ruled 9-6 that the photo ID law violates Section 2 of the Voting Rights Act, and therefore cannot stand as written. The Fifth Circuit also instructed the district court to further consider plaintiffs' claim that the law was passed with discriminatory intent.

In August 2016, the parties reached an agreement, which was put into effect by the trial court that allowed voters without photo ID to vote a regular ballot in November 2016 after showing one of a much larger number of IDs and signing a declaration.

On September 23, 2016, Texas filed a [petition](#) for a writ of certiorari with the United States Supreme Court, asking the Court to review the Fifth Circuit's decision.

**LATEST NEWS:** On February 28, 2017, the District Court heard arguments on the claim of intentional discrimination. On April 10, 2017, having reweighed the evidence, the District Court [once again ruled](#) that Texas legislators enacted SB 14 with the intent to discriminate against minority voters in Texas.



## **Virginia**

[\*Lee v. Virginia State Bd. of Elections\*](#) (voter id)

U.S.D.C. for the Eastern District of Virginia, 3:15-cv-357

U.S.C.A. for the Fourth Circuit, 16-1605

In June 2015, affected voters and the Democratic Party of Virginia brought suit arguing that Virginia's strict voter ID law violates the U.S. Constitution and Section 2 of the Voting Rights Act.

After a February 2016 trial, the trial court upheld the voter ID law in May 2016.

**LATEST NEWS:** Plaintiffs appealed to the Fourth Circuit Court of Appeals, and a panel heard oral argument on September 22, 2016. On December 13, 2016, the Fourth Circuit unanimously [rejected](#) the challenge to the Virginia law.

## **Wisconsin**

[\*Frank v. Walker\*](#) (voter id | lead case)

U.S.D.C. for the Eastern District of Wisconsin, 11-cv-1128

U.S.C.A. for the Seventh Circuit, 14-2058, 15-3582, 16-3003

U.S. Supreme Court, 14A352

In December 2011, the ACLU of Wisconsin, National ACLU, and National Law Center for Homelessness and Poverty brought suit on behalf of individual plaintiffs challenging Wisconsin's strict photo ID law as discriminatory against African-American and Hispanic voters and a denial of the vote, bringing claims under the U.S. Constitution and Section 2 of the Voting Rights Act.

In April 2014, the trial court struck down the law; the state appealed to the Seventh Circuit, which overturned the trial court's decision and upheld the law. However, after the Supreme Court stepped in, the law was not in effect for the November 2014 election. It went into effect in April 2015, after the Supreme Court declined to reconsider the Seventh Circuit's ruling upholding the law.

Plaintiffs undertook a second stage of litigation, in which they argue that the strict photo ID law is unconstitutional for those who cannot get ID. In July 2016, the trial court issued an order instructing that voters who lack photo ID must be able to cast a regular ballot in the November 2016 elections after completing an affidavit.

Wisconsin filed an emergency appeal of this decision with the Seventh Circuit and on August 10, 2016, the Seventh Circuit stayed the district court's order. On August 26, 2016, the full Seventh Circuit declined to reconsider this decision. Because of the Seventh Circuit's order, Wisconsin's law was in effect without the affidavit alternative for those without ID during the 2016 elections.



**LATEST NEWS:** After the Seventh Circuit issued the emergency stay on the District Court's order, the case proceeded to the Seventh Circuit on appeal. Oral Argument was [held](#) on February 24, 2017.

[\*One Wisconsin Inst., Inc. v. Nichol\*](#) (voter id)

U.S.D.C. for the Western District of Wisconsin, 15-cv-324

U.S.C.A. for the Seventh Circuit, 16-3091

In May 2015, One Wisconsin Institute, affected voters, and Wisconsin Citizen Action brought suit to challenge various election law policies, including the voter ID provision and legislative restrictions on early voting opportunities, under the U.S. Constitution and Section 2 of the Voting Rights Act.

On July 29, 2016, the trial court blocked many of the challenged restrictive voting provisions. The trial court ruled, among other things, that Wisconsin could not maintain its voter ID law without creating a functional safety net for those without ID and permitting students to use expired but otherwise valid student IDs. The court also found that the limitations on in-person absentee voting were intentionally racially discriminatory. The decision is being appealed to the Seventh Circuit.

On August 22, 2016, a panel of the Seventh Circuit Court of Appeals denied Wisconsin's request to put the trial court's decision on hold in advance of the November election. On August 26, 2016, the full Seventh Circuit declined to reconsider this decision.

On September 30, the district court ordered state officials to investigate whether DMV clerks were properly instructing voters on the process to obtain ID for voting, after recordings of applicants receiving incorrect information were made public. The court held a hearing on the issue on October 13th, and issued an order finding that Wisconsin had failed to sufficiently inform the public about ID options and had failed to sufficiently train DMV officials on how to issue IDs for voting. The court ordered the state to increase its education efforts, retrain DMV officials, and submit weekly progress reports to the court up until the election, but declined to enjoin the voter ID law for the November election.

**LATEST NEWS:** The case is currently on appeal with the Seventh Circuit. Oral argument was [held](#) on February 24, 2017.