

[5th Circ. Reverses Block On Texas Voter Registration Rule](#)

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Summary

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Body

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The decision comes about a year after the U.S. Supreme Court [denied an emergency bid](#) by voting rights advocacy group Project Vote Inc. to block Texas from enforcing state laws placing restrictions on voter registration it argues are keeping millions of eligible voters from the polls. Project Vote had filed an emergency appeal asking the nation's highest court to vacate the Fifth Circuit's decision to [stay an injunction](#) issued in August by U.S. District Judge Gregg Costa that prevented the state from enforcing the restrictions on third-party voter registration, mainly organizers of voter registration drives.

But, in a 2-1 decision, a three-judge appellate panel for the Fifth Circuit reversed and remanded Judge Costa's preliminary injunction Thursday, rejecting the appellees' argument that the nonresident, county and compensation provisions of the law are facially unconstitutional.

"We are unpersuaded that the smorgasbord of activities comprising voter registration drives involves expressive conduct or conduct so inextricably intertwined with speech as to require First Amendment scrutiny," Circuit Judge Edith H. Jones wrote in the published opinion. "Appellees have not made a clear showing that they are likely to succeed in demonstrating that the challenged provisions of the [volunteer deputy registrar] law violate their First Amendment rights or are preempted by the [National Voter Registration Act]."

Circuit Judge W. Eugene Davis dissented from the majority's decision to reverse the preliminary injunction, saying the majority takes an "unsupportably restrictive" view of the scope of the plaintiffs' activity to register voters that is protected by the First Amendment.

At issue is a Texas rule requiring anyone who hands voter registration forms in to the county registrar to become a volunteer deputy registrar. Under the rule, volunteer deputy registrars must be Texas residents and can serve terms no longer than two years, according to court documents.

The volunteer deputy registrars are limited to turning in forms only in the counties in which they have registered, though they may register in multiple counties. They are prohibited from photocopying registration applications and must deliver any applications to the county registrar in person within five days of receipt, according to court documents.

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Texas said the goal of the measures is to prevent fraud and promote accountability in the voter registration process. But nonprofit organization Voting for America Inc., an affiliate of voter-registration organization Project Vote, sued the state in February 2012 over the rules, saying they violate the group's First Amendment rights.

Lauren Bean, spokeswoman for the Texas Attorney General's Office, hailed the decision.

"The Attorney General's Office is pleased that the courts have once again reaffirmed the Texas Legislature's ability to adopt common-sense election laws that are designed to instill confidence in our electoral process and prevent election fraud," Bean said in a statement Thursday. "Decisions like this one are reminders that these cases are nothing more than political stunts that are brought by plaintiffs - who simply oppose election integrity on political grounds - and their lawyers, who seek to reap attorneys' fees at the taxpayers' expense."

Circuit Judges Edith H. Jones and Jerry Edwin Smith joined in the decision from which Circuit Judge W. Eugene Davis dissented.

Representatives for the plaintiffs didn't immediately return requests for comment late Thursday.

Plaintiffs are represented by Ryan M. Malone of Ropes & Gray LLP.

The case is Voting For America Inc. et al. v. John Steen et al., case No. 12-40914, in the United States Court of Appeals for the Fifth Circuit.

--Additional reporting by Jeremy Heallen and Carolina Bolado. Editing by Chris Yates.