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A Tight Election May Be Tangled in Legal Battles

By **ETHAN BRONNER**

The November presidential election, widely expected to rest on a final blitz of advertising and furious campaigning, may also hinge nearly as much on last-minute legal battles over when and how ballots should be cast and counted, particularly if the race remains tight in battleground states.

In the last few weeks, nearly a dozen decisions in federal and state courts on early voting, provisional ballots and voter identification requirements have driven the rules in conflicting directions, some favoring Republicans demanding that voters show more identification to guard against fraud and others backing Democrats who want to make voting as easy as possible.

The most closely watched cases — in the swing states of Ohio and Pennsylvania — will see court arguments again this week, with the Ohio dispute possibly headed for a request for emergency review by the Supreme Court.

In Wisconsin, the home state of the Republican vice-presidential candidate, Representative Paul D. Ryan, the attorney general has just appealed to the State Supreme Court on an emergency basis to review two rulings barring its voter ID law. But even if all such cases are settled before Nov. 6 — there are others in Florida, Iowa and South Carolina — any truly tight race will most likely generate post-election litigation that could delay the final result.

“In any of these states there is the potential for disaster,” said Lawrence Norden of the Brennan Center for Justice at New York University School of Law. “You have close elections and the real possibility that people will say their votes were not counted when they should have been. That’s the nightmare scenario for the day after the election.”

In the 2000 presidential election, a deadlock over ballot design and tallying in parts of Florida led the Supreme Court, in a 5-4 vote, to stop a recount of ballots, which led to George W. Bush defeating Al Gore. Since then, both parties have focused on voting procedures.

The Obama campaign, for example, brought suit in Ohio over its reduction of early voting weekends used more by blacks than other groups.

Republicans have expressed concern over what they call voter integrity. They say they fear that registration drives by liberal and community groups have bloated voter rolls with the dead and the undocumented and have created loose monitoring of who votes and low public confidence in the system. They have instituted voter identification rules, cut back on early voting and sought to purge voter lists by comparing them with others, including those of the Department of Homeland Security.

Judicial Watch, a conservative organization aimed at reducing voter fraud, says it has found that voter rolls last year in 12 states seemed to contain an ineligible number of voting-age residents when compared with 2010 census data. It is suing both Indiana and Ohio for failing to clean up their rolls in keeping with their obligations under the National Voter Registration Act.

Democrats worry about what they call voter suppression. They say that voter fraud is largely a myth and that the goal of the Republican-led laws and lawsuits is to reduce voting by minorities, the poor and the young, who tend to vote more for Democrats.

At the Democratic National Convention in North Carolina on Thursday, Representative John Lewis of Georgia expressed his party's view on voter-related Republican-led laws when he compared them to poll taxes and literacy tests used to prevent blacks from voting in an earlier era.

"Today, it is unbelievable that there are Republican officials still trying to stop some people from voting," he said. "They are changing the rules, cutting polling hours and imposing requirements intended to suppress the vote."

Courts have taken a mixed view of the two sides' claims. Voter ID laws have been both upheld as fair and struck down as discriminatory. In Pennsylvania, a state judge upheld the voter ID law, and the State Supreme Court will hear appeal arguments on Thursday.

Elsewhere recently, Democrats have won more than they have lost, but appeals are forthcoming. A federal court agreed with the Justice Department that Texas' voter ID law was discriminatory and also struck down the state's curtailment of voter registration; in Ohio, early voting has been restored and rules restricting voter registration drives have been struck down. The Ohio case is under appeal to the Federal Court of Appeals for the Sixth Circuit under expedited review. Texas will also appeal but not in time to affect this election. A Justice Department challenge to South Carolina's voter ID law is in federal court.

In Florida, a federal court ruled last month that a year-old state law that reduced the number of early voting days to 8 from 12 could not be enforced in 5 of the 67 counties that are covered under the federal Voting Rights Act of 1965. But the court suggested that extending the hours of voting over the eight-day period in those five counties would satisfy the federal requirements. Gov. Rick Scott, a Republican, was able to persuade election officials in four of the counties to extend their daily hours, but the supervisor of elections in Monroe County, which includes the Florida Keys, refused, saying that the county would maintain an early voting period of 12 days.

One issue that is likely to lead to lawsuits after Election Day is that of provisional ballots. Under federal law, anyone whose identity or voting precinct is in doubt can ask for a provisional ballot at any polling station and then has a number of days to return with the required documentation to make that vote count.

Because there are thousands of voting rolls and precincts in the country, and because Americans move and often fail to register their new addresses, such problems are

common. Poll workers may also fail to direct a voter to the right precinct — there can be multiple voting precincts in the same voting hall — or fail to fully check that a provisional ballot has been filled out properly.

In the 2008 election in Ohio, 14,000 provisional ballots were discounted through a combination of voter and poll worker error. The recent federal suit in Ohio was aimed at giving the voter the benefit of the doubt by officially blaming poll workers. The court ruled that unless a poll worker demonstrates that a voter specifically defied instructions, provisional ballots with purely technical faults will count.

That decision is under appeal.

“Ohio is a real mess,” Tom Fitton, the president of Judicial Watch, said in explaining why his group was suing the state to clean up its voting rolls. “It has terrible maintenance procedures. If the results are close there, both sides are going to be screaming about it.”

The same may be true in Florida, the site of the 2000 debacle. There are still numerous overlapping problems there, and 5 of the 67 counties fall under federal oversight because of a history of racial discrimination, leading to the creation of two sets of practices and more confusion.

A federal judge recently halted Florida’s Republican-voted restrictions on voter registration groups there, calling them “harsh and impractical.” The number of early voting days has been reduced in a vast majority of counties, but the number of overall hours has remained the same, as each voting day has been lengthened. Many predict confusion, and others see the issue lingering long after Election Day.

“If the vote in Florida is anywhere near as close as it was in 2000, then I think that the gates may be open to a flood of litigation,” said Bob Graham, a former Democratic senator and governor of Florida.

There are also likely to be disputes over poll station monitoring. True the Vote, a conservative group, says it is training one million citizens as election observers to make up for what it says is a lack of poll workers.

Catherine Engelbrecht, the president of True the Vote, said the job of those trained would be to “observe, document and report on activities inside the polls that are not in keeping with state law.”

Two groups on the other side of the political spectrum, Demos and Common Cause, are issuing a report on Monday, “Bullies at the Ballot Box,” that warns of “a real danger that voters will face overzealous volunteers who take the law into their own hands to target voters they deem suspect.”

The voters that the groups say they are most worried about are members of minority groups.