



November 3, 2011

Mr. T. Christian Herren, Jr.
Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

RE: 2011-2775 Texas Submission under Section 5, Voting Rights Act, of Senate Bill 14

Dear Mr. Herren:

LWV-Texas again writes to express concern about preclearance of the Texas voter photo ID requirement scheduled to take effect January 1, 2012. We continue to believe as stated in our letter of August 18 that implementation of this law as scheduled may perpetuate existing disparities in voter participation between Anglos and minorities in Texas. We also argued that it was necessary to know the final rules for implementing photo ID including the new election identification certificate (EIC) in order to assess the impact on minority communities.

The Texas Secretary of State (SOS) and Department of Public Safety (DPS) have issued proposed rules covering some important implementation issues, and LWV-Texas has submitted written comments (attached). The rules as proposed are complex and do not address the concerns that LWV and others have raised in earlier comments to DOJ. In many cases, proposed rules actually increase the prospects that photo ID will have a disparate effect on ethnic minorities. The complexity of the rules is likely to be confusing to the voters and to those ultimately responsible for enforcement, which will have the same discriminatory result. Although some proposed rules have been published, there remain important unknowns including whether a receipt issued at the time of application for a qualified ID will be accepted at the polls if the ID has not yet been received.

Our initial letter also indicated reservations about limited time that would be available to inform voters and for voters to obtain a qualified photo ID in time for the March 6 primary once the final implementing rules are known. Early voting for the primary actually begins February 21. Logistically it would seem impossible for DPS to process EIC applications for the more than 600,000 that may not have a qualified DPS-issued photo ID by the March primary and perhaps even for the May 12 uniform date for local elections. It would be extremely prejudicial to implement a photo ID requirement for the first time for the November general election.

Rules for Substantially Similar Names and EICs

We are concerned that proposed rules for substantially similar names are not well enough defined that election workers across the state can be brought up to speed and make consistent decisions about voter acceptance by February 21 when early voting begins for the March 6 primary. To be accepted to vote a regular ballot, the name on the photo ID must match the name on the voter registration list or must be considered to be substantially similar by election workers. SOS proposed rules for substantially similar names require interpretation

by election workers, and that discretion may adversely affect minority voters. The proposed rules indicate that a name should be accepted as substantially similar if it is a “customary variation” and other information on the photo ID matches voter registration records. Most election workers might accept Rob or Bob as a customary variation of Robert. We fear that many would be less likely to recognize Beto as a customary variation of Robert so Beto would not be accepted for a regular ballot as frequently as Rob or Bob. Considerable multicultural knowledge is required if election workers are to recognize and make consistent and fair decisions about customary variations of names for all ethnic and language groups.

DPS proposed rules for the EIC are complex, and the documentation required is more restrictive than the documentation required for a DPS-issued driver’s license (DL) or personal ID (ID) or than required by the language of SB 14. For many voters who lack a qualified photo ID, it would be easier to apply and pay the fee for a DL or personal ID. The restricted documentation needed to apply for an EIC would make it difficult if not impossible for some voters without a qualified photo ID to obtain the EIC. A voter who lacks a qualified photo ID and whose citizenship papers do not include a photo would only be able to apply for an EIC if she/he has a Texas DL or ID that has expired between 2 and 24 months. If that voter has never had a DPS-issued DL or ID or their DL or ID expired more than 24 months ago, that voter could only meet the documentation requirements for the EIC with a court-ordered name or gender change. An individual whose current photo ID expires 61 days before an election would only be allowed to apply for the EIC the single day prior to the election. EIC rules omit many documents, including tribal membership, that are accepted to establish identity for a DL or ID.

The EIC may be available at no cost, but the documents required with the application for an EIC entail cost. For most who lack a DL or ID with appropriate expiration dates, a US birth certificate would be required and will cost money and time. The point of a free EIC is to avoid the poll-tax like cost of a DL or ID. However, the cost of a birth certificate effectively is a poll tax.

Further, SB 14 does not provide an opportunity for low-income voters who are unable to produce a photo ID to execute an affidavit of indigency so that their votes will count. If the prospective voter does not have the required documentation for a photo ID, such as a birth certificate, the cost of obtaining the documentation may be prohibitive. Even accounting for inflation, the cost of obtaining a birth certificate is more than the poll tax that was outlawed long ago. Not providing an affidavit of indigency alternative for low-income voters, who are disproportionately ethnic minorities, effectively imposes a poll tax.

Representatives of minority communities have raised questions about DPS background checks indicating many in their communities fear applying to DPS for an ID for fear that something adverse such as unpaid parking ticket will show up during a DPS background check. In a telephone call, Janie Smith of DPS told LWV-TX VP Anita Privett that DPS does not plan to do background checks on EIC applicants. Nonetheless, perceptions and distrust of DPS may lead some who lack a qualified photo ID to give up their right to vote rather than to apply to DPS for one of the qualified photo IDs.

Inadequate Time to Prepare Election Workers and Voters

Several factors work together to make it difficult to prepare either voters or election workers adequately by the time early voting begins on February 21 for the March 6 primaries. Proposed rules are highly complex, and it doesn’t appear that final rules will be known before the holiday season when public

attention turns to other issues. Further, there is already considerable misinformation and misunderstanding about the voter photo ID requirement. In Harris County (Houston), voter photo ID was included in the training manual election worker for the November 2011 election even though requirement isn't scheduled to take effect until 2012 and has not yet been precleared under Section 5 of the VRA.¹ The *Austin American-Statesman* reports that the House sponsor for SB 14 says those 65 and older are exempt from the voter ID requirement.² In fact SB 14 does not include an exemption based on age. Texas is also a very large state with 254 counties and an estimated 8,500+ election precincts. The effective window for clearing up misunderstandings/misinformation and educating election workers and voters across Texas on what voter photo ID will mean in practice will be limited to a few weeks between the first of the year and the beginning of early voting February 21.

To determine whether their photo ID will be accepted to vote a regular ballot at the polls, voters need to know exactly which IDs will be accepted at the polls. Voters who don't have a qualified photo ID need to know how to obtain one, how to obtain the documentation required with an application for the ID, and how long this process might take. Voters who have a qualified photo ID need to understand that the names on the ID and on the voter registration list should match or be judged substantially similar, what will happen if the names don't match, how to align names that don't match, and when an address match may be helpful.

In Texas, voter participation rates for minorities are significantly lower than participation rates for Anglos. The voter photo ID requirement set forth in SB 14 is likely to exacerbate differential patterns of voter participation between Anglos and others in Texas, and the proposed implementation rules would only make matters worse.

I appreciate the opportunity to share the perspective of LWV-TX. If additional information is needed, please contact Linda Krefting, LWV-Texas Vice President, at 806-793-6136 or lkrefting@att.net.

Sincerely,



Karen Nicholson
President, LWV-Texas

1 "Election manual includes Voter ID law before it's the law," <http://www.chron.com/news/houston-texas/article/Election-manual-includes-Voter-ID-law-before-it-s-2245612.php> (accessed 11-2-11).

2 "Data show Texas voters could be barred under new ID law," <http://www.statesman.com/news/texas-politics/data-show-texas-voters-could-be-barrd-under-1902244.html> (accessed 11-2-11).