U.S. Department of Justice
Civil Rights Division

TCH:RSB:BFH:JLM:ZB:AAO:maf
DJ 166-012-3
2011-2775

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

September 23, 2011

Ann McGeehan, Esq.
Director of Elections
P.O. Box 12060
Austin, Texas 78711-2060

Dear Ms. McGeehan:

This refers to Chapter 123 (S.B. 14) (2011), which amends the Texas Transportation Code relating to the issuance of election identification certificates, and which amends the Texas Election Code relating to the increase in penalty for illegal voting and attempted illegal voting, the implementation schedule for the enforcement of the penalties, and procedures for the implementation of the photographic identification requirements, including registration procedures, provisional ballot procedures, notice requirements, and education and training requirements, for the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on July 25, 2011; additional information was received through September 15, 2011.

The Attorney General does not interpose any objections to Sections 16 and 23 of Chapter 123, which relate to the increase in penalties for illegal voting and attempted illegal voting. However, we note that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.

With regard to amendments in Sections 1 through 15 and 17 through 22 of Chapter 123, our analysis indicates that the information sent is insufficient to enable us to determine that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, as required under Section 5 of the Voting Rights Act. Thus, additional information is necessary so that we may complete our review of your submission.

1. A detailed description of the voter education program that the State will implement pursuant to Section 5 of Chapter 123.

2. A detailed description of the efforts that the State will undertake, including the issuance of any rules, regulations, or written guidance, to inform and train state and county election officials regarding voter identification requirements, including, but not

limited to, the implementation of the election identification card system; the acceptance and handling of a voter's identification pursuant to Section 6 of Chapter 123; the verification of identity pursuant to Section 9 of the Act; and the manner in which the State will resolve discrepancies between information on presented identification and information contained on the list of registered voters. Please include a description of all materials that will be used to implement the program.

3. On September 15, 2011, the State provided a draft of proposed administrative rules developed by the Texas Department of Public Safety (DPS) regarding the election identification certificate program:

a. Please advise of the State's plans and timing for publication of such rules, receipt of public comment and final rules enactment;

b. Please provide a detailed description of the locations and dates when an individual may obtain a free election identification certificate, including, but not limited to: a description of all means of informing the public of the distribution process; if any transportation or other assistance will be provided to individuals trying to obtain such a certificate, and whether such efforts at providing information and/or assistance will be focused on any groups of persons or particular areas of the state; and a description of all equipment and materials necessary to implement the program, as well as any renewal procedures, if applicable.

4. Any additional rules, regulations, or written guidance that the Secretary of State or DPS plans to promulgate pursuant to the Act.

5. With regard to the information provided on September 7, 2011, which indicated that 605,576 registered voters do not appear to have a Texas driver's license or other current form of photo identification issued by the Department of Public Safety (DPS):

a. The number of registered voters in Texas, by race and Spanish surname within county of residence, who currently possess a Texas driver's license or other form of photo identification issued by DPS that is current or has expired within sixty days. Please include a description of the manner in which you calculated these numbers;

b. For the 605,576 registered voters who the State has advised do not have a Texas driver's license or personal identification card, please provide the number of such persons by Spanish surname, as well as an estimated number by race, within county of residence; and

c. Describe any and all efforts, other than the requirements outlined in Section 5 of Chapter 123, to provide notice to these individuals of the requirements of S.B. 14 and the availability of a free DPS-issued identification.

The Attorney General has sixty days to consider a completed submission pursuant to Section 5. This sixty-day review period will begin when we receive the information specified above. 28 C.F.R. 51.37. However, if no response is received within sixty days of this request, the Attorney General may object to the proposed changes consistent with the burden of proof placed upon the submitting authority. 28 C.F.R. 51.40 and 51.52(a) and (c). Changes that affect voting are legally unenforceable unless and until the appropriate Section 5 determination has been obtained. *Clark* v. *Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10. Therefore, please inform us of the action the State plans to take to comply with this request.

If you have any questions concerning this letter or if we can assist you in obtaining the requested information, please call Zach Bromer (202-305-7798) of our staff. Refer to File No. 2011-2775 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

for T. Christian Herren, Jr.
Chief, Voting Section