



March 2, 2012

Mr. T. Christian Herren, Jr.
Chief, Voting Section
Civil Rights Division
Room 7254-NWB
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

RE: Comment under Section 5, Submission No. 2011-2775

Dear Mr. Herren:

The Brennan Center for Justice and the Lawyers' Committee for Civil Rights Under Law, on behalf of the Texas State Conference of the NAACP, write to renew our opposition to the State of Texas's request for preclearance of its new voter ID law, Senate Bill 14.¹ We respectfully ask that the Department of Justice (DOJ) deny Section 5 preclearance to this legislation.

In our previous letters to the DOJ,² we explained how Texas had failed to meet its burden of proving that Senate Bill 14 was not enacted with a discriminatory intent and will not have a retrogressive effect on minority electoral opportunity.³ The most recent information that the State has provided to DOJ⁴ does nothing to undermine, let alone disprove, our prior analysis. In particular, the additional data provided by the State do not contradict the ample evidence of Senate Bill 14's likely discriminatory impact on voters of color, as highlighted by our past comment letters. Moreover, as Texas election officials themselves have publicly admitted,⁵ the most recent response does not contain the information that the DOJ has repeatedly asked Texas to provide.

¹ Act of May 27, 2011, Senate Bill 14, 2011 Texas General Laws ch. 123 ("Senate Bill 14"), *available at* <http://www.sos.state.tx.us/statdoc/bills/sb/SB14.pdf>. Texas originally submitted its request for preclearance to the Department of Justice on July 25, 2011, and the Department subsequently requested more information from Texas on September 23, 2011, and November 16, 2011.

² *See* Letter from Gary Bledsoe, President, Texas State Conference of the NAACP, et al., to T. Christian Herren, Chief, Voting Section, Dep't of Justice (Sept. 14, 2011) (on file with Brennan Center), *available at* http://brennan.3cdn.net/772eab3b160f2da9f7_n4m6ivkrc.pdf; Letter from Gary Bledsoe, President, Texas State Conference of the NAACP, et al., to T. Christian Herren, Chief, Voting Section, Dep't of Justice (Nov. 16, 2011) (on file with Brennan Center), *available at* http://brennan.3cdn.net/2062c7abece9c952aa_pgm6bnxae.pdf.

³ The Supreme Court has made clear that the covered jurisdiction "must prove that the [voting law] change is nondiscriminatory in purpose and effect" and "bears the burden of providing the Attorney General information sufficient to make that proof." *Branch v. Smith*, 538 U.S. 254, 263 (2003) (internal citations omitted).

⁴ *See* Letter from Keith Ingram, Director of Elections, Office of Tex. Sec'y of State, to T. Christian Herren, Jr., Chief, Voting Section, Civil Rights Division, Dep't of Justice (Jan. 12, 2012), *available at* http://www.brennancenter.org/page/-/Texas_Letter_to_DOJ_January_2012.pdf.

⁵ *Id.*; Gary Scharrer, *Voter ID Woes Blamed on GOP*, SAN ANTONIO EXPRESS-NEWS, Nov. 19, 2011, <http://www.mysanantonio.com/news/article/Texas-may-have-tough-time-providing-voter-ID-data-2277093.php>.

Specifically, Texas's new information does not further illuminate the central question of which voters, broken down by race and ethnicity, do not currently have the required ID. The data fail to provide the total number of registered voters in each racial and ethnic category, and thus do not enable a determination to be made as to how many people in each category do *not* possess DPS-issued ID. The relative rates of ID ownership among different racial and ethnic populations are central to the question of racial impact; they tell us whether a disproportionate number of voters of color would be harmed by this law.

In addition, the limited data that the State has provided contain numerous other deficiencies. As Texas itself has acknowledged, the data provide limited information about Latino voters since the State's Department of Public Safety (DPS), which issues driver licenses and state IDs, only began listing "Hispanic" as an option for racial classification on their forms in 2009. This, combined with the lack of any racial information from the Secretary of State's office (as race or ethnicity is not asked on voter registration forms), leads to misleading numbers for both the "Hispanic" and "White" categories since the "White" category, and perhaps others, are most likely inflated due to the State's previous practice of classifying Latino voters as "White." Since our past analyses demonstrate that Senate Bill 14's photo ID requirement is likely to impose a disproportionate burden on Texas's Latino voters, the State cannot disprove Senate Bill 14's retrogressive effect by offering these deficient and inaccurate data regarding the number of Latino voters who have DPS-issued ID.⁶

In light of the various shortcomings of Texas's most recent submission, we once again urge the Justice Department to interpose an objection to Senate Bill 14.

Respectfully submitted,

Gary Bledsoe, President
Robert Notzon, Legal Redress Chair
Howard Jefferson, Political Action Chair
Texas State Conference of the NAACP

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**Admission to New York bar pending.*

⁶ Bledsoe (Nov. 16, 2011), *supra* note 2.