

The State of Texas



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Hope Andrade
Secretary of State

July 25, 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: Submission under Section 5, Voting Rights Act, of Senate
Bill 14, Chapter 123, 82nd Legislature, 2011.

Dear Mr. Herren:

The Legislature of the State of Texas has enacted Senate Bill 14, Chapter 123, 82nd Legislature, 2011 (the "Act"), relating to requirements to vote, including presenting proof of identification. As described in more detail below and with some exceptions, the Act requires a voter to present a current or recently-expired form of photo identification in order to vote in person at a polling place. The Act also requires the Office of the Secretary of State and local election officials to develop voter education programs, create training programs for polling place officials, and revise election forms and postings beginning September 1, 2011.

Because of the upcoming statutory deadlines contained in the Act, we are hereby requesting expedited consideration of this submission under 28 C.F.R. § 51.34. An expedited response from your office will allow the state to promptly implement comprehensive education of voters and local election officials; therefore, we would appreciate a decision from your office by August 20, 2011.

Pursuant to the requirements of 28 C.F.R. § 51.27, the following information is submitted with respect to the Act:

- (a) & (b) A copy of the Act is enclosed. An electronic copy of the Act is also available at <http://www.sos.state.tx.us/statdoc/bills/index.shtml>.
- (c) The Act amends the Texas Election Code (the "Code") and the Texas Transportation Code to require voters to present a current form of photo identification to qualify to vote in person at the polling place in elections held in the State of Texas. The Act creates exemptions for certain voters with disabilities, voters whose religious beliefs prevent

them from being photographed for identification, and voters who have lost their identification in natural disasters. A voter, who does not present a current form of photo identification when appearing to vote at the polling place and who does not fall within the scope of the Act's exemptions, may elect to vote provisionally. A voter who casts a provisional ballot under these circumstances may then take advantage of the Act's post-election cure procedures. The Act provides that a voter who presents his or her photo identification or executes one of the affidavits set out in Section 65.054(b)(2)(B) (religious objection) or (C) (natural disaster objection) in the presence of the registrar (discussed below) within 6 days after the election shall have his or her provisional ballot counted. Moreover, the Act creates a new election identification certificate and provides that the Texas Department of Public Safety ("TDPS") will make these certificates available, free of charge, to voters who do not have access to any other acceptable form of photo identification.

The Act requires state and local authorities to engage in a thorough voter education and outreach program that includes the following components: including the new photo-identification requirements on voter registration cards; including these requirements on the Secretary of State's web site in multiple languages; including this same information on local county voter registrars' websites; including a physical posting of these requirements in all county clerks' offices; including a physical posting of the requirements at prominent places within polling locations, and including a statewide voter education program conducted by the Secretary of State.

The Act requires the Secretary of State to adopt training standards and develop training materials to implement the changes to polling place procedures contained in the Act as soon as practicable after September 1, 2011. In addition, as soon as practicable, the county clerk is required to provide a training session under Section 32.114 of the Code that incorporates the new Secretary of State training standards to be adopted under Section 32.111 of the Code.

Finally, the penalty for illegal voting is raised from a state jail felony to a second degree felony. The criminal penalty for attempted illegal voting is increased from a Class A misdemeanor to a state jail felony.

The provisions of the Act regarding the need to present a current form of photo identification when voting by personal appearance – including the new cure provisions – go into effect for elections held on or after January 1, 2012. The increased criminal penalties contained in the Act apply only to offenses committed on or after January 1, 2012.

SECTION-BY-SECTION REVIEW

SECTION 1 of the Act amends Section 13.002 of the Code by adding new subsection (i). New subsection (i) provides that a voter registration applicant who wishes to be exempted on the basis of disability from the identification requirements of Section 63.001(b) of the Code (which are discussed in more detail below) must present, along with his or her application, (1) written documentation either from the Social Security

Administration stating that the applicant has been determined to have a disability or from the Department of Veterans Affairs demonstrating that the applicant has a disability rating of at least 50 percent and (2) a statement that the applicant does not possess one of the acceptable forms of identification described under Section 63.0101 of the Code (as amended by the Act).

Section 13.002 was added to the Code by Senate Bill 616, Chapter 211, 69th Legislature, 1985 (precleared on August 16, 1985), and amended by Senate Bill 1441, Chapter 436, 70th Legislature, 1987 (precleared on August 31, 1987), House Bill 612, Chapter 472, 70th Legislature, 1987 (precleared on August 31, 1987), House Bill 613, Chapter 920, 70th Legislature, 1987 (precleared on August 31, 1987), Senate Bill 221, Chapter 2, 71st Legislature, 1989 (a non-substantive change not subject to preclearance), House Bill 74, Chapter 916, 73rd Legislature, 1993 (precleared on September 13, 1993), House Bill 1914, Chapter 390, 74th Legislature, 1995 (precleared on October 13, 1995), House Bill 127, Chapter 797, 74th Legislature, 1995 (precleared on January 16, 1997), Senate Bill 500, Chapter 454, 75th Legislature, 1997 (precleared on August 11, 1997), House Bill 1549, Chapter 1315, 78th Legislature, 2003 (precleared on November 20, 2003), House Bill 1268, Chapter 1049, 79th Legislature, 2005 (precleared on October 21, 2005), House Bill 417, Chapter 614, 80th Legislature, 2007 (precleared on November 16, 2007), Senate Bill 74, Chapter 1295, 80th Legislature, 2007 (precleared on September 27, 2007), Senate Bill 1969, Chapter 87, 81st Legislature, 2009 (a non-substantive change not subject to preclearance), House Bill 536, Chapter 91, 81st Legislature, 2009 (precleared on July 15, 2009), and most recently House Bill 1448, Chapter 632, 81st Legislature, 2009 (precleared on August 5, 2009).

SECTION 2 of the Act amends Section 15.001 of the Code by adding new subsection (c) to provide that the registration certificate issued to a voter who meets the disability exemption requirements of new Section 13.002(i) of the Code (discussed above) must indicate that the voter is exempt from the requirement to present identification other than the registration certificate before being accepted for voting.

Section 15.001 was added to the Code by Senate Bill 616, Chapter 211, 69th Legislature, 1985 (precleared on August 16, 1985), and amended in Senate Bill 1441, Chapter 436, 70th Legislature, 1987 (precleared on August 31, 1987), House Bill 1914, Chapter 390, 74th Legislature, 1995 (precleared on October 13, 1995), House Bill 127, Chapter 797, 74th Legislature, 1995 (precleared on January 16, 1997), and Senate Bill 932, Chapter 532, 80th Legislature 2007 (precleared on November 19, 2007).

SECTION 3 of the Act adds new Section 15.005 to the Code to require the voter registrar of each county to provide notice of the identification requirements for voting (as amended by the Act) and a detailed description of those requirements with each voter registration certificate and registration certificate renewal mailed from the county voter registrar. The Secretary of State is required to provide the wording of the notice.

SECTION 4 of the Act makes a conforming amendment to Section 15.022 of the Code to require the voter registrar to correct a registration on receipt of the registration omissions

list or an affidavit submitted under Section 63.006 from a voter swearing that he or she has been placed in the incorrect precinct by the voter registrar's office.

Section 15.022 was added to the Code by Senate Bill 616, Chapter 211, 69th Legislature, 1985 (precleared on August 16, 1985), and amended by Senate Bill 280, Chapter 54, Chapter 54, 1987 (precleared on August 24, 1987), House Bill 74, Chapter 916, 73rd Legislature, 1993 (precleared on September 11, 1993), and most recently House Bill 127, Chapter 797, 74th Legislature 1995 (precleared on January 16, 1997).

SECTION 5 of the Act adds new Section 31.012 to the Code. According to this new section, as of September 1, 2011, the Secretary of State and each county voter registrar that maintains an Internet website must provide notice of the identification requirements for voting (as amended by the Act) on their respective websites. The information must be provided in each language in which voter registration materials are available in the state and county. The Secretary of State must provide the wording of the notice. New section 31.012(b) requires the Secretary of State to conduct a statewide education effort regarding the identification requirements for voting (as amended by the Act). New section 31.012(c) requires each county clerk to post in a prominent location a physical copy of the notice that is required to be posted on the county's or Secretary of State's Internet website (discussed above). This notice must be provided in each language in which voter registration materials are available in the county.

SECTION 6 of the Act is effective September 1, 2011 and adds Section 32.111(c) to the Code. This new subsection requires the Secretary of State to include requirements for the acceptance and handling of identification presented by a voter to an election officer in its poll worker training materials.

Section 32.111 was added to the Code by Senate Bill 616, Chapter 211, 69th Legislature, 1985 (precleared on August 16, 1985) and amended in House Bill 1695, Chapter 1316, 78th Legislature, 2003 (precleared on November 20, 2003).

SECTION 7 of the Act is effective September 1, 2011 and amends Section 32.114(a) of the Code to require that each election clerk must complete the part of the training program described in SECTION 6 (described above).

Section 32.114 was added to the Code by Senate Bill 616, Chapter 211, 69th Legislature, 1985 (precleared on August 16, 1985). It was amended by House Bill 74, Chapter 916, 73rd Legislature, 1993 (precleared on September 11, 1993), House Bill 1603, Chapter 864, 75th Legislature, 1997 (a non-substantive change not subject to preclearance) and House Bill 1695, Chapter 1316, 78th Legislature, 2003 (precleared on November 20, 2003).

SECTION 8 of the Act adds new Section 62.016 to the Code. The new section requires the presiding judge of each polling place to post in a prominent place on the outside of each polling location a list of the acceptable forms of identification for voting by personal appearance. The list must be in 24-point font and posted separately from other required notices.

SECTION 9 of the Act amends several subsections of Section 63.001 of the Code.

Amended Section 63.001(b) of the Code to require a voter to present one form of identification as set out in Section 63.0101 of the Code to an election official at the polling place in order to qualify to vote. Prior law allowed a voter to present a current voter registration certificate.

Amended Section 63.001(c) of the Code to provide that, after the election officer receives from the voter the identification described by Section 63.0101 of the Code (see above), the election officer shall review the identification to determine whether the voter's name is on the precinct list of registered voters. If the election officer determines (using standards adopted by the Secretary of State) that the voter's name on the identification is substantially similar to but does not match exactly the name on the list, then the voter will be accepted for voting if the voter submits an affidavit stating that the voter is the person on the list of registered voters.

Amended Section 63.001(d) of the Code to provide that if, as determined by the procedures set forth in Section 63.001(c) (see above), the voter's name is on the precinct list and the voter's identity is verified from the documentation provided, the voter shall be accepted for voting.

Subsection 63.001(f) is amended to make a conforming change.

Section 63.001(g) of the Code is added to provide that a voter who does not meet the identification requirements of this section may vote provisionally. For such a voter, this new subsection requires that an election officer must inform the voter of his or her eligibility to cast a provisional ballot. The election officer must also provide the voter with written information (in a form prescribed by the Secretary of State) that lists the requirements for identification, states the procedures for presenting identification, includes a map showing the location where the identification may be presented, and includes a notice that if the post-election procedure is followed, and the voter is found to have been eligible to vote at the precinct, the provisional ballot will be accepted.

Section 63.001(h) of the Code is added to provide that a voter with disabilities who presents his or her voter registration certificate, containing the indication described by Section 15.001(c) (see above), on offering to vote is exempt from the identification procedures described by this section.

Section 63.001 was added to the Code by House Bill 616, Chapter 211, 69th Legislature, 1985 (precleared on August 16, 1985) and amended by House Bill 127, Chapter 797, 74th Legislature, 1995 (precleared on January 16, 1997) and most recently House Bill 1603, Chapter 864, 75th Legislature, 1997 (a non-substantive change not subject to preclearance).

SECTION 10 of the Act amends Section 63.0011(a) of the Code to provide that a federal or state judge or the spouse of a federal or state judge whose residence address has been

omitted from the precinct list of registered voters under Section 18.005(c) of the Code shall be asked by the polling place election official whether the residence address on their identification is current and whether the voter has changed residence in the county.

Section 63.0011 was added to the Code by House Bill 127, Chapter 797, 74th Legislature, 1995 (precleared on January 16, 1997). It was later amended by House Bill 41, Chapter 594, 80th Legislature, 2007 (precleared on October 2, 2007) and by House Bill 3069, Chapter 927, 81st Legislature, 2009 (precleared on September 9, 2009).

SECTION 11 of the Act adds new Section 63.0012 to the Code. The new section is effective September 1, 2011 and requires an election officer to distribute written notice of the identification that will be required for voting beginning with elections held on or after January 1, 2012, and information on obtaining an election identification certificate free of charge from the TDPS to each voter that presents a form of identification that will not be sufficient for acceptance as a voter on or after that date. The wording of this notice must be designed by the Secretary of State. Section 63.0012 of the Code expires on September 1, 2017.

SECTION 12 of the Act amends Section 63.006 of the Code. Section 63.006(a) is amended to provide that, with respect to a voter who presents the proper identification, but whose name is not on the precinct list of registered voters, the voter shall be accepted for voting if the voter also presents a registration certificate indicating the voter is registered in the precinct or is registered in a different precinct in the same county and executes an affidavit stating the voter is a resident of the precinct where offering to vote, was a resident of the precinct at the time the information on the residence address was last provided to the registrar, did not deliberately provide false information to the registrar, and will vote only once in the election.

Under amended Section 63.006(b) of the Code, after the voter is accepted, the voter's name must be entered on the registration omissions list.

Section 63.006 was added to the Code by House Bill 616, Chapter 211, 69th Legislature, 1985 (precleared on August 16, 1985) and amended by House Bill 1603, Chapter 864, 75th Legislature, 1997 (a non-substantive change not subject to preclearance).

SECTION 13 of the Act amends Section 63.009 of the Code to delete the procedure under which a voter without a certificate and whose name is not on the precinct list of registered voters could vote after the voter registrar confirmed the voter's eligibility and the voter completed two separate affidavits. Under the change, the voter without a certificate whose name does not appear on the precinct list would have to vote provisionally and complete the provisional voter affidavit.

Section 63.009 was added to the Code by House Bill 616, Chapter 211, 69th Legislature, 1985 (precleared on August 16, 1985). It was amended by House Bill 75, Chapter 728, 73rd Legislature, 1993 (precleared on September 13, 1993), House Bill 330, Chapter 1078, 75th Legislature, 1997 (precleared on October 8, 1997), House Bill 331, Chapter 1349, 75th Legislature, 1997 (precleared on September 2, 1997), and most recently by

House Bill 1549, Chapter 1315, 78th Legislature, 2003 (precleared on November 20, 2003).

SECTION 14 of the Act amends Section 63.0101 of the Code to remove any form of identification that does not include a photograph from the forms of identification that are acceptable for voting by personal appearance at the polling place. The deleted forms of identification include a birth certificate or other documents confirming birth and admissible in a court of law, citizenship papers that do not contain the person's photograph, official mail addressed to the voter from a governmental entity, copies of a current utility bill, bank statements, paychecks, or other government documents that show the name and address of the voter. Additionally, the Act deletes the authorization for the Secretary of State to prescribe additional forms of identification.

Also deleted as acceptable identification at the polling place are driver's licenses and personal identification cards issued by other states.

Added to the list of acceptable forms of identification are a United States military identification card that contains the person's photograph and has not expired or that expired no earlier than 60 days before the date of presentation, a TDPS-issued concealed handgun license that has not expired earlier than 60 days before the date of presentation, and the TDPS-issued election identification certificate, as set out in Chapter 521A, Texas Transportation Code.

Finally, a TDPS-issued driver's license, a personal identification card or a United States passport that expired more than 60 days before the date of presentation are no longer valid forms of identification.

Section 63.0101 was added to the Code by House Bill 330, Chapter 1078, 75th Legislature, 1997 (precleared on October 8, 1997). It was amended by House Bill 331, Chapter 1349, 75th Legislature, 1997 (precleared on September 2, 1997), by House Bill 1603, Chapter 864, 75th Legislature, 1997 (a non-substantive change not subject to preclearance), and most recently by House Bill 1549, Chapter 1315, 78th Legislature, 2003 (precleared on November 20, 2003).

SECTION 15 of the Act amends Section 63.011 of the Code to add a requirement that the provisional ballot affidavit include a space for the election officer to indicate whether the voter presented a valid form of identification.

Section 63.011 was added to the Code by House Bill 1549, Chapter 1315, 78th Legislature, 2003, (precleared on November 20, 2003), and later amended by House Bill 2823, Chapter 1073, 80th Legislature, 2007 (precleared on September 24, 2007).

SECTION 16 of the Act amends Section 64.012 of the Code to increase the penalty for illegal voting in an election to a second degree felony from a third degree felony and to increase the penalty for attempted illegal voting to a state jail felony from a Class A misdemeanor.

Section 64.012 was added to the Code by Senate Bill 616, Chapter 211, 69th Legislature, 1985 (precleared on August 16, 1985), amended by House Bill 1603, Chapter 864, 75th Legislature, 1997 (a non-substantive change not subject to preclearance), and by House Bill 54, Chapter 393, 78th Legislature, 2003 (precleared on November 21, 2003).

SECTION 17 of the Act amends Section 65.054(b) of the Code to first clarify that a provisional ballot *shall* be accepted (rather than *may* be accepted) if the early voting ballot board makes certain determinations. Among these determinations are two that are newly-added by the Act. The first applies to situations where the voter: (1) meets the identification requirements either at the time the ballot was cast or when submitted to the county voter registrar after the election per Section 65.0541 of the Code; (2) has a religious objection to being photographed and completes an affidavit stating the objection and that the voter has consistently refused to be photographed for any governmental purpose during the period the voter has held the religious belief; or (3) completes an affidavit asserting that he or she does not have valid identification due to a natural disaster declared by the President of the United States no earlier than 45 days prior to the date the ballot was cast which caused the destruction of the voter's identification or the inability to access the voter's identification. The second permitted determination applies to a situation where the voter has not been challenged and the voter voted a provisional ballot solely because the voter did not meet the identification requirements set forth in the Act.

Section 65.054(b) was added to the Code by House Bill 1549, Chapter 1315, 78th Legislature, 2003, (precleared on November 20, 2003), and later amended by House Bill 2823, Chapter 1073, 80th Legislature, 2007 (precleared on September 24, 2007).

SECTION 18 of the Act adds new Section 65.0541 to the Code. Under this new section, a voter who casts a provisional ballot because he or she did not present an acceptable form of identification at the polling place may, not later than six days after the date of the election, present a valid form of identification to the voter registrar for examination, or execute one of the affidavits set out in Section 65.054(b)(2)(B) (religious objection) or (C) (natural disaster objection) in the presence of the registrar. The Secretary of State is charged with prescribing the procedures to implement this section.

SECTION 19 of the Act amends Section 66.0241 of the Code to make conforming changes related to SECTION 12 of the Act. These changes relate to which documents are placed in Envelope Number 4, which is given to the county voter registrar after election day to make updates to the voter registration list.

SECTION 20 of the Act adds a new Chapter 521A to the Texas Transportation Code. Section 521A.001(a) requires TDPS to issue election identification certificates to persons who state that they are obtaining the certificate to comply with the identification requirements set out in Section 63.001 of the Code because they do not have one of the acceptable forms of identification listed under Section 63.0101 of the Code. At the time the person applies for the election identification certificate, the person must be a registered voter and either present a valid registration certificate or apply for voter registration at that time.

Section 521A.001(b) provides that TDPS may not charge a fee for issuance of the election identification certificate or a duplicate certificate.

Under Section 521A.001(c), the election identification certificate may not be used or accepted as a personal identification certificate.

Under Section 521A.001(d), an election official may not deny a person who presents an election identification certificate the ability to vote on the basis that the person failed to submit a TDPS driver's license or personal identification card.

Section 521A.001(e) requires TDPS to design the election identification certificate to be similar in form, but distinguishable by color, from the State's driver's license and personal identification certificate. TDPS may cooperate with the Secretary of State in designing the form.

Under Section 521A.001(f), TDPS may require applicants for the election identification certificate to furnish the same information required for a driver's license under Section 521.142 of the Texas Transportation Code.

Section 521A.001(g) authorizes TDPS to cancel and require surrender of an election identification certificate if TDPS determines the holder was not entitled to the certificate or provided incorrect/misleading information on the certificate application.

Finally, under Section 521A.001(h), an election identification certificate expires on a date set by TDPS, except that certificates issued to voters 70 or older do not expire.

SECTION 21 of the Act repeals Section 63.007 of the Code and Section 63.008 of the Code to conform with changes in SECTIONS 12 and 13 of the Act.

SECTION 22 of the Act requires the Secretary of State to adopt training standards and develop training materials to implement the changes to polling place procedures under the Act as soon as practicable after September 1, 2011. In addition, as soon as practicable, the county clerk is required to provide a session of training under Section 32.114 of the Code that incorporates the new Secretary of State training standards developed under Section 32.111.

SECTION 23 of the Act provides that the change in law set out in SECTION 16, increasing the penalty for illegal voting to a second degree felony and the penalty for attempted illegal voting to a state jail felony, applies only to offenses committed on or after January 1, 2012. Offenses committed before that date are covered by the law in effect at the time of the offense, and an offense is considered to have been committed before January 1, 2012 if any element of the offense was committed prior to that date.

SECTION 24 of the Act provides that, effective September 1, 2011, county voter registrars may use state funds disbursed under Chapter 19 of the Code for expenses

connected with voter registration drives and other activities designed to increase voter registration. This section expires on January 1, 2013.

- (d) The submitting authority is the Honorable Hope Andrade, Secretary of State of Texas, in her capacity as chief elections officer of Texas. The Secretary of State's office may be reached at P.O. Box 12060, Austin, Texas 78711-2060, (512) 463-5650.
- (e) Not applicable.
- (f) Not applicable.
- (g) The authority responsible for the passage of the Act was the Texas Legislature.
- (h) The Act was adopted pursuant to the provisions of Tex. Const. art. III, § 30.
- (i) The Act was passed by the Texas Senate on January 26, 2011, and by the Texas House with amendments on March 24, 2011. The Senate adopted the conference committee report on May 9, 2011, and the House adopted the conference committee report on May 16, 2011. The Act was signed by Governor Rick Perry on May 27, 2011.
- (j) The training provisions, the notice of identification requirements in SECTION 11, and the state funds disbursement requirement in SECTION 24 take effect on September 1, 2011. The remaining provisions take effect on January 1, 2012.
- (k) The provisions of the Act have not been implemented.
- (l) These procedures will affect the residents of the State of Texas.
- (m) The reason for the change provided for in the Act is to ensure the integrity of the voting process by allowing registered voters to vote, enhancing detection of ineligible voters, and deterring ineligible voters from voting, all while providing safeguards to allow eligible voters the opportunity to have their ballots counted.
- (n) The Act will not affect members of any racial or linguistic minority differently from the way the general public is affected. The Act does not have the intent and will not have the effect of diluting the voting strength of any racial or linguistic minority.

The United States Department of Justice (“DOJ”) previously precleared Georgia’s 2005 law, which—like the Act—requires voters to present photo identification before voting by personal appearance. That preclearance decision is consistent with the United States Supreme Court’s decision in *Crawford v. Marion County Election Board*, in which the Court rejected constitutional challenges to Indiana’s photo-ID law. As former Justice John Paul Stevens acknowledged in the Supreme Court’s decision upholding Indiana’s law, modern life requires photo identification to transact even the most mundane business. Indeed, Justice Stevens cited with approval the following statement of the Commission on Federal Election Reform, that former President Jimmy Carter and former Secretary of State James A. Baker III jointly chaired: “Photo identification cards are

currently needed to board a plane, enter federal buildings, and cash a check. Voting is equally important.” *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 193 (2008).

Commensurate with this observation, Texas’ law requiring voters to present photo identification at the polls provides for the acceptance of commonly held documents: a state-issued driver’s license or personal identification card, a United States military identification card, a United States passport, a United States citizenship certificate, or a concealed handgun license. *See* Section 13 of the Act. In fact, while there are only 12,604,131 registered voters in Texas, there are currently about 17,008,051 active Texas driver’s licenses and identification cards.

However, to address concerns some raised about the Act’s photo identification requirements, the Texas Legislature included several voter education provisions, as well as other safeguards for Texas voters. For example, the Act requires state and local authorities to engage in a thorough voter education and outreach program that includes the following components: inclusion of the new photo-identification requirements on new voter registration cards and renewal cards that are issued to all registered voters beginning late this year; including these requirements on the Secretary of State’s web site in all languages required for election materials in Texas; including this same information on local registrars’ websites in the locally requisite languages; including a physical posting of these requirements in all county clerks’ offices in such languages; including a physical posting of the requirements at prominent places within polling locations, and a statewide voter education program conducted by the Secretary of State. *See* Sections 3, 4, 5 and 8 of the Act. In sum, the Act is carefully designed to ensure that every voter, regardless of race, disability, education level or economic station, is fully informed about the Act’s requirements.

In addition to these voter education and outreach efforts, the Act contains other safeguards to protect the rights of eligible voters to vote and have their ballots counted. For example, the Act provides for a “cure” period whereby a voter may return after casting a provisional ballot to present the required ID if the voter failed to do so at the polls. Indeed, the Act specifically requires election workers to inform voters who do not present an adequate form of photo identification at the polling place of the procedures they may follow to have their ballots counted. *See* Sections 9 and 11 of the Act.¹ It also requires election clerks to take specific training regarding the Act’s requirements so that all voters will receive like treatment when they present themselves for voting in person. *See* Sections 6 and 7 of the Act. Moreover, the Act addresses the situation in which a voter’s photo identification documents include a spelling that is not identical—but is substantially similar to—the spellings on poll lists in polling locations. *See* Section 9 of the Act. Lastly, the Act creates an entirely new identification document that the State must provide free of charge to voters who attest to their inability to pay for other acceptable forms of identification. *See* Section 20 of the Act.

¹Beginning in September 1, 2011, election workers must provide notice of the acceptable forms of photo identification for elections conducted after January 1, 2012 to all voters presenting identification that does not meet the requirements of the Act, as well as information on how such voters can obtain acceptable identification for free. *See* Section 11 of the Act.

The framework Texas has created in its photo-identification law is consistent with photo-identification regimes in other states, such as Georgia's precleared 2005 law. Georgia's administratively precleared law is remarkably similar to the Act in that Georgia requires the following forms of photo-identification for in-person voting: a Georgia driver's license, an identification card issued by any Georgia state entity or the United States, a valid United States passport, an employee identification card issued by any Georgia state entity, the United States or local political entities, a United States military identification or a tribal identification card. *See* GA. Code Ann. § 21-2-417(a) (2010). Like the Act, Georgia's law includes a "cure" period (of more limited duration than the Texas cure period), free photo identification for economically-distressed voters lacking other approved forms of identification, and an extensive voter education and outreach program. *See* GA Code Ann. §§ 21-2-417(b), 418, and 419 (2010). In fact, DOJ precleared Georgia's original photo-identification law even before Georgia enacted its free ID provision and its most recent extensive voter education mandate, which Georgia added in a subsequent legislative session.

§
The history of Indiana's photo-identification law is also relevant to DOJ's Section 5 evaluation of the Act. Indiana enacted an in-person voting photo-identification law similar to the Act that requires voters to present photo identification that the United States or the State of Indiana issued. Such identification must include the name of the voter in a form that conforms to the voter's registration record and an expiration date. The identification must be current or have expired after the date of the most recent general election. *See* Ind. Code Ann. §§ 3-11-8-25.1 and 3-5-2-40.5 (2008). Indiana excepted those voting in person at a precinct polling place located at a state-licensed care facility where they reside and those attesting to indigent status or a religious exception to being photographed. *See* Ind. Code Ann. §§ 3-10-1-7.2(e), 3-11-8.25.1, 3-11-10-1.2, 3-11.7-5-1, and 3-11.7-5-2.5 (2008). Indiana voters not qualifying for an exception and failing to meet the photo-identification standard are allowed to vote provisionally and later provide the required identification. *See* Ind. Code Ann §§ 3-11-8-25.1, 3-11-7.5-2.5, 3-11.7-5-1, and 3-11.7-5-2.5.²

Various plaintiffs challenged Indiana's statutory regime on federal and state constitutional grounds and federal and state statutory grounds, claiming the law would negatively impact minority communities. *See Indiana Democratic Party v. Rokita*, 458 F.Supp.2d 775, 820-43 (S.D.Ind. 2006), *aff'd*, 472 F.3d 949 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008). Although the claims did not include federal Voting Rights Act dilution claims, they did include allegations that the State of Indiana violated voting rights provisions of the Civil Rights Act of 1964. *See id.* at 839-42 (discussing claims under 42 U.S.C. 1971). Moreover, in considering the gamut of plaintiffs' claims, the courts at the trial and appellate levels clearly considered concerns that Indiana's law would negatively impact members of minority communities. *See, e.g., Crawford*, 472 F.3d 949, 952 (7th Cir. 2007), *aff'd*, 553 U.S. 181, 187 (2008); *Rokita*, 458 F.Supp.2d at 795-96.

At every level, the federal courts upheld Indiana's law. In doing so, the trial court wrote:

² For a more complete explanation of Indiana's statutory scheme as well as evidence of the actual practice in Indiana elections, *see Indiana Democratic Party v. Rokita*, 458 F.Supp.2d 775, 786-87 (S.D. Ind. 2006), *aff'd*, 472 F.3d 949 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008).

Despite apocalyptic assertions of wholesale voter disenfranchisement, Plaintiffs have produced not a single piece of evidence of any identifiable registered voter who would be prevented from voting pursuant to [the Indiana photo ID law] because of his or her inability to obtain the necessary photo identification. Similarly, Plaintiffs have failed to produce any evidence of any individual, registered or unregistered, who would have to obtain photo identification in order to vote, let alone anyone who would undergo any appreciable hardship to obtain photo identification in order to be qualified to vote . . .

Plaintiffs' inability to provide the names or otherwise identify any particular affected individuals persists despite various polls and surveys that were conducted for the specific purpose of discovering such individuals . . .

[I]t is a testament to the law's minimal burden and narrow crafting that Plaintiffs have been unable to uncover anyone who can attest to the fact that he/she will be prevented from voting despite the concerted efforts of the political party and numerous interested groups who arguably represent the most severely affected candidates and communities.

Rokita, 458 F.Supp.2d at 822-23. The Seventh Circuit added that there was "something remarkable about the plaintiffs considered as a whole" as there was not a single one "who intend[ed] not to vote" because of the Indiana law. *Rokita*, 472 F.3d at 951-52.

As for the United States Supreme Court, Justice Stevens explained in the lead opinion for the Court, that given Indiana's provision of free photo identification, in most instances, "the inconvenience of making a trip to the [Bureau of Motor Vehicles], gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting." *Crawford*, 553 U.S. at 198. Three other justices who joined in the judgment of the Court refused to even entertain, at least for constitutional purposes, a person-by-person analysis of the burdens of a voting regulation when the regulation has non-discriminatory purpose and is generally applicable. *See id.* at 205-209. Justice Scalia wrote for those justices as follows: "The universally applicable requirements of Indiana's voter-identification law are eminently reasonable. The burden of acquiring, possessing, and showing a free photo identification is simply not severe, because it does not 'even represent a significant increase over the usual burdens of voting.' And the state's interests . . . are sufficient to maintain that minimal burden. That should end the matter." *Id.* at 209.

Analysis of voting patterns in Indiana since the implementation of that state's photo-identification law demonstrates that any fear these laws will decrease minority voter turnout is misguided. Professor Jeffrey Milyo, a professor of public affairs and economics who has been affiliated with the University of Missouri, the University of Kansas, and the Cato Institute specifically looked at voting patterns in Indiana before and

after the implementation of photo ID requirements in a publication for the Institute of Public Policy at the University of Missouri's Harry S. Truman School of Public Affairs. He compared turnout between the 2002 and 2006 midterm elections and implemented various control factors or "sensitivity checks" to isolate the effects of Indiana's photo ID law. See Jeffrey Milyo, *The Effects of Photographic Identification on Voter Turnout in Indiana: A County Level Analysis*, Institute of Public Policy, University of Missouri Harry S. Truman School of Public Affairs at 1, 7 (December 2007). Professor Milyo specifically sought to identify the effects of photographic identification on "turnout in counties with a greater percentage of minority, poor, elderly, or less educated populations." See *id.* He concluded that while overall voter turnout in Indiana increased about two percentage points from 2002 to 2006, turnout in counties with greater percentages of minority or poor voters increased by even more, and the most consistent effect of photo identification in Indiana was to increase turnout in counties with a greater percentage of Democratic-leaning voters. See *id.* at 1, 7.³

In light of Indiana's experience, it should not be surprising that data from Georgia—the state with the other implemented photo identification requirement most similar to the Act—reflect no dampening of minority voter turnout. As the attached material from the Georgia Secretary of State's Office states, minority turnout increased after Georgia adopted its photo identification law. And it did so for both Hispanics and African Americans in both presidential and midterm election cycles (2004 to 2008 and 2006 to 2010). In sum, the evidence not only reflects no negative turnout impact on minority voters, but actually suggests that photo identification laws may have bolstered turnout.

To the extent the Department seeks more information regarding the Act, please contact:

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³ Findings such as Professor Milyo's may explain why states all over the United States continue to adopt photo identification requirements for in person voting. For example, just weeks before the date of this submission, Rhode Island adopted a voter ID requirement. The law accepts photo and non-photo ID until 2014, at which point Rhode Island will accept only photo ID. See *Rhode Island Governor Signs Voter ID Bill*, Yahoo News, July 7, 2011, <http://sg.news.yahoo.com/rhode-island-governor-signs-voter-id-bill-211606786.html> Professor Milyo's findings may also explain why majorities of Americans across racial and other lines consistently express support for requiring photo identification to vote in person. Indeed, non-partisan independent polling conducted in Texas contemporaneously with the legislative debate regarding the Act reflected that virtually every subgroup in the survey supported photo identification for in person voting including: "whites, blacks and Hispanics; men and women; and urban, suburban and rural. Hispanics — one of the populations many fear would be disadvantaged by such a law — favor showing photo IDs by a 68 percent to 22 percent margin." Ross Ramsey, *UT/TT Poll: Texans Are Ready to Roll the Dice*, TEXAS TRIBUNE, Feb. 23, 2011, <http://www.texastribune.org/texas-issues/gaminggambling/uttt-poll-texans-are-ready-to-roll-the-dice/>.