

The State of Texas



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Hope Andrade
Secretary of State

January 12, 2012

Mr. T. Christian Herren, Jr.
Voting Section
Civil Rights Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington D.C. 20530

VIA FACSIMILE 202-616-9514

Re: Submission under Section 5, Voting Rights Act, of
Senate Bill 14, Chapter 123, 82nd Legislature,
2011; File No. 2011-2775.

Dear Mr. Herren:

In connection with the submission by the State of Texas for pre-clearance of Senate Bill 14, Chapter 123, 82nd Legislature 2011, which concerns photo identification for in person voting, you have asked us to provide the Department of Justice (DOJ) with additional information beyond that already provided by the State. Specifically, you have required Texas to identify:

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 [the Department of Public Safety (DPS)] that is current or has expired within sixty days.

By requesting Spanish surname data, the DOJ's request acknowledges that the DPS database does not accurately reflect the number of Hispanic voters in Texas who possess a driver's license or photo identification card. Nonetheless, in a good faith attempt to satisfy DOJ's request, the State has compiled the requested data--despite the State's reservations about the reliability of that data.

Shortly after passage of the federal Voting Rights Act in 1965, the State of Texas adopted a policy to not require Texans provide their race or ethnicity when registering to vote. As a result, Texas does not maintain any race or ethnicity data for its list of registered voters. As explained in a previous communication with your office, Texas' decision to eliminate race as a factor in its voter registration process makes it impossible to generate fully reliable data in response to your request. Nonetheless, the State of Texas and the agencies working to respond to this request—including the Secretary of State's Office, The Department of Public Safety, and the Attorney General's Office—have assembled data as directed by you.

DOJ's directive that the State of Texas identify Hispanic voters by matching voter registration lists with lists of licensed drivers and personal ID holders also produces inaccurate and unreliable data because prior to May 2010 the Department of Public Safety did not list Hispanic as a race that driver's license and personal identification applicants could select. Prior to May 2010, the DPS followed federal Office of Management and Budget guidelines, which does not categorize Hispanic as a "race." Thus, in following DOJ's directive to match voter registration lists with lists of driver's license and ID holders produces anomalous and highly misleading results. Due to the recent addition of a "Hispanic" field to the driver's license and personal ID application, the number of Hispanic ID-holders in Texas is exponentially higher than the DPS's raw data indicates.

The following summarizes factors that raise questions about the reliability of the data compiled in response to the DOJ's request and reveals why that data very likely undercounts the number of voters--minority and otherwise--who possess a DPS-issued photo identification:

- Voters are not asked to provide their race or ethnicity when registering to vote in Texas.
- DPS previously used the following racial classifications on all ID applications: American Indian/Alaskan Native, Asian/Pacific Islander, Black, Other, and White. Not until May 2010 did ID applications at DPS offices across the State contain a field for "Hispanic."
- It is impossible to identify which racial classifications Texans of Hispanic descent selected on ID applications completed prior to May 2010. For this reason, DPS's data for racial classifications other than Hispanic are no doubt significantly distorted.
- In attempting to match names between Texas's race-neutral list of registered voters and the DPS's list of driver's license and ID holders, a number of very common irregularities causes numerous incorrect "no-match" results. These include name changes, inconsistent use of nicknames or initials, inconsistent placement of suffixes such as "Jr." or "III," misspellings, transposed or illegible digits in the ID number provided by the voter, clerical data-entry errors. Simply put, these databases were not designed to be merged. Due to the many difficulties associated with attempting to merge the two databases, the number of "no-match" entries reflected in our response is significantly higher than the actual number of registered voters in Texas who lack an ID.
- The Hispanic-surname analysis you request is an imprecise substitute for accurate racial data. It is impossible to know whether a surname is representative of a voter's race, or the result of any number of legal name changes resulting from actions such as marriage, adoption, or a legal change of identity.. Indeed, in merging the State's list of Spanish-surnamed registered voter with DPS records containing racial classification data, many individual Texans have mismatched ethnicities between the two databases.
- While we have attempted to respond to your directive, given the data available to us, we note that your directive does not take into account the number of registered voters in Texas who possess another form of photo identification that can be used for in-person voting under Senate Bill 14, including a Concealed Carry Permit issued by DPS, a United States Passport, a U.S. Certificate of citizenship, or a United States Military Identification card.
- Further, your request does not account for Texans who will obtain a free Election Identification Card from DPS.

Despite these difficulties, all of the agencies involved in this endeavor have made a good faith effort to respond to your request and to cooperate throughout the administrative preclearance process so that preclearance and implementation of Senate Bill 14 can occur as soon as possible. Furthermore, in spite of these difficulties and the resulting unreliability of the numbers, you have indicated that you will deny preclearance of Senate Bill 14 if our office fails to respond to your most recent request for additional information. Therefore, in response to your request, the State of Texas provides the attached Exhibits described below: For reasons stated above and in previous communications, this data does not provide an accurate picture of the racial makeup of registered voters or ID holders in Texas, in large part because of the State of Texas' decision to eliminate race as a factor in its voter registration process. However, these Exhibits represent the State's good-faith attempt to respond to your directive.

Column A of Exhibit A is an updated count of registered voters by county in the State of Texas.

Column B of Exhibit A provides the total number of registered voters by county who provided a DPS ID number to us when they registered to vote, plus those of the remaining registered voters whom we were able to match to a high degree of confidence with an entry in the DPS database, which includes racial identification information. As explained above, Column B significantly undercounts the actual number of registered voters with an ID because of the many difficulties in accurately matching the race-neutral registered voter list to the DPS database that includes racial identification information. The numbers in Column B, however, are the closest that we can get to an accurate number given the data limitations.

Column C of Exhibit B contains the number of registered voters by county that we were able to match to a high degree of confidence with an entry in the DPS database. As explained above, Column C significantly undercounts the actual number of registered voters with an ID because of the many difficulties in accurately matching the race-neutral registered voter list to the DPS database that includes racial classification information. It also significantly undercounts the number of registered voters with an ID because it does not include voters who provided an ID when they registered to vote but who, for whatever reason, could not be matched with a high degree of confidence to an entry in the DPS database containing racial identification information. As a result, the number in Column C is lower than, and less accurate than, the number in Column B for the same county. Given the data limitations explained above, however, this is the only count of registered voters for which we can provide information on race or ethnicity.

Column D of Exhibit B contains the racial information provided to DPS for all registered voters counted in Column C of Exhibit B. For the reasons explained above, this data is not fully reliable and is misleading — due to DPS's evolving methods of collecting information on race and ethnicity. (In addition, Column C of Exhibit B significantly undercounts the number of registered voters who have an ID.) Because of limitations in the data, however, we were forced to use the racial breakdown of this group as the basis for estimating the racial breakdown of the more accurate (though still incomplete) count of registered voters with ID listed in Column B of Exhibit A.

Column E of Exhibit A is an estimation of the racial breakdown of all voters counted in Column B of Exhibit A. To reach this estimate, we applied the racial percentages by county found in Column D of Exhibit B to the more accurate (though still incomplete) count of registered voters with ID found in Column B of Exhibit A.

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Column F of Exhibit A contains Spanish-surname data for the registered voters by county contained in Column B of Exhibit A. We previously provided you with Spanish-surname data for all registered voters. We note that the Spanish-surname data has flaws as a proxy for racial information and that in merging the State's list of Spanish-surnamed registered voters with DPS records containing racial identification data, many individual Texans have mismatched ethnicities between the two databases.

The attached Exhibits represent the good-faith effort of the State of Texas to respond to your most recent request for information despite the many limitations in the data available to us. Please do not hesitate to contact me with any questions or concerns about this response.

Sincerely,

A handwritten signature in blue ink, appearing to read "KI".

Keith Ingram
Director of Elections

c: Office of the Attorney General
Department of Public Safety

KI:EHW:id

