DJ 166-012-3
X0612

Honorable Mark White
Secretary of State of Texas
Capitol Station
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to Senate Bill 11 (1975), which was submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act. Your submission was received on November 26, 1975. While we have noted your request for expedited consideration, we have been unable to give you an earlier response to this matter.

The Attorney General does not interpose an objection to the changes contained in Senate Bill 11 except as noted below. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

Section 6 of Senate Bill 11 restricts the ability of political parties in Texas to hold primary elections after 1974 by requiring that a political party nominate its candidates only by convention if the party's candidate for governor in the last preceding general election received at least 2% but less than 20% of the total votes cast

for that office. Immediately prior to Senate Bill 11 no such restriction was imposed upon any political party whose candidate for governor in the last preceding election received at least 2% of the vote for that office. In fact, Section 6 of Senate Bill 11 itself allowed such a political party to conduct primaries in 1974.

Under present state law the costs to political parties of primary elections are reimbursed by the State, but the State does not reimburse political parties for the costs of conducting party conventions. The reason advanced by the state for its limitation on the primary as a vehicle for nomination by political parties in Texas is a lessening of the burdensome expense of state-financed primary elections.

According to our information, in the 1974 gubernatorial election in Texas the Democratic Party's candidate received approximately 62% of the vote, the Republican Party's candidate received approximately 32%, and approximately 6% of the vote was received by the candidate of the Raza Unida Party, a party composed predominantly of Mexican-Americans and devoted to the protection of Mexican-American interests. The Raza Unida Party accounted for under $60,000 or less than 3% of the state's total expenditure for primary elections in 1974 and, therefore, under Senate Bill 11 the only parties able to conduct primary elections in 1976 will be the two parties which combined to account for over 97% of the cost to the state of primary elections in 1974. Thus, based on these results the effect of the Section 6's restriction in 1976 and thereafter necessarily would fall on only one party, the Raza Unida, and significantly limit the opportunity for Mexican-Americans to nominate, on an equal basis with others, a candidate of their choice.

Under these circumstances we are unable to conclude that the stated purpose for the primary election restriction in Senate Bill 11 outweighs the effect of the restriction on the racially identifiable La Raza Unida, and that beginning in 1976 the provisions of Section 6 of Senate Bill 11 will not have a prohibited discriminatory effect within the meaning of Section 5 of the Voting Rights Act. Accordingly, on behalf of the Attorney General, I must object to the implementation of those provisions of Section 6 of Senate Bill 11.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these provisions neither have 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. However, until and unless such a judgment is obtained, the provisions objected to are unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division