



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

January 16, 1996

The Honorable Antonio Garza
Secretary of State
State of Texas
Elections Division
P.O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Secretary:

This refers to Chapter 797 (1995), insofar as it authorizes agency employees to make determinations of an individual's eligibility to register based on citizenship information contained in the agency's file; eliminates the requirement that agency employees must request the completion of a declination form each and every time an individual is offered registration and refuses; authorizes cancellation of registration immediately upon a voter's written indication of residence outside the county; authorizes cancellation of registration on the November 30th following the second general election for state and county officers rather than on the November 30th following the second general election for federal officers; and relocates voter registration assistance requirements as part of the implementation of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg to 1973gg-10, for the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on November 14, 1995.

With regard to the authorization to cancel registration immediately upon a voter's written indication of residence outside the county; the authorization to cancel registration on the November 30th following the second general election for state and county officers rather than on the November 30th following the second general election for federal officers; and the relocation of voter registration assistance requirements, the Attorney General does not interpose any objection. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the these changes. See Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the provision which allows agency employees to make determinations of an individual's eligibility to register based on citizenship information contained in the agency's file, we have reviewed the information provided by the State, as well as information from the 1990 Census and other sources, including the Immigration and Naturalization Service. According to the 1990 Census, minority persons represent 34 percent of the State's total population (14,229,191) and 30 percent of its voting age population (9,923,085). Hispanic persons comprise the largest minority group (21 percent of the total population). Data from the INS indicate that nearly 70,000 applications for citizenship are currently pending in Texas and that between fiscal years 1993 and 1994, over 51,000 Texas residents became citizens. Two-thirds of those who became citizens in 1993 and 1994 were of Hispanic or Asian ancestry.

We do not take the position that persons who are clearly not citizens should be registered to vote or even encouraged to register. However, with the rapid rate at which minority persons are becoming citizens, there is a strong likelihood that some of the citizenship information contained in agency files may be outdated or incorrect. We are concerned that persons who have become citizens since they last filled out forms at a particular agency will not be offered registration. There are no provisions or safeguards in the legislation to deal with situations in which the citizenship information in the file is outdated or wrong. Because the law makes no provisions for informing potential registrants that the reason they were not offered registration is that their file indicates non-citizen status, there is no opportunity for potential registrants to provide any relevant or updated information. Moreover, there are no mechanisms to explain to potential registrants who ask to register and are refused that the reason for the refusal is because of information in the file indicating non-citizen status.

Because minority persons represent the majority of persons attaining citizenship in Texas and the information contained in agency files is unlikely to keep pace with their citizenship rate, allowing agency employees to make eligibility determinations based on citizenship information contained in those files is likely to have a retrogressive effect on minority persons. Beer v. United States, 425 U.S. 130, 141 (1976); 28 C.F.R. 51.54. As a result, I cannot conclude, as I must under the Voting Rights Act, that your burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to Chapter 797 insofar as it authorizes agency employees to make determinations of an individual's eligibility to register based on citizenship information contained in the agency's file.

We note under Section 5 you have the right to seek a declaratory judgment from the United States District Court for

the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the change in the method of election continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

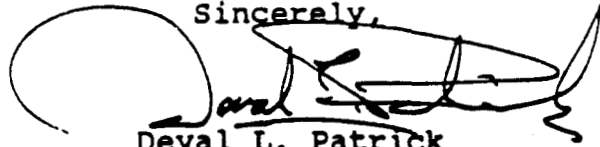
With regard to the elimination of the requirement that agency employees must request the completion of a declination form each and every time an individual is offered registration and refuses, we have been informed that the Secretary of State's Office will promulgate rules to implement the procedures that will be used to document offers of registration and record declinations and will provide a training program, including a detailed memorandum and a video tape, pertaining to these procedures. When these procedures and training program are finalized, they should be submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5 of the Voting Rights Act. It is necessary that these changes either be brought before the District Court for the District of Columbia or submitted to the Attorney General for a determination that they do not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group. Changes which affect voting are legally unenforceable unless Section 5 preclearance has been obtained. Clark v. Roemer, 500 U.S. 646 (1991); Procedures for the Administration of Section 5 (28 C.F.R. 51.10).

Because the elimination of the requirement that agency employees must request the completion of a declination form each and every time an individual is offered registration and refuses and the implementation procedures to be utilized by the Secretary of State are directly related, they must be reviewed simultaneously. Accordingly, it would be inappropriate for the Attorney General to make a preclearance determination on the instant change until the related changes have been submitted for Section 5 review. See 28 C.F.R. 51.22(b) and 51.35.

Should you elect to make a submission to the Attorney General for administrative review rather than seek a declaratory judgment from the District Court for the District of Columbia, it should be made in accordance with Subparts B and C of the procedural guidelines. At that time we will review all changes simultaneously; however, any documentation previously provided need not be resubmitted.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas plans to take concerning these matters. If you have any questions, you should call Colleen M. Kane (202-514-6336) of our staff. Refer to File Nos. 95-2017 and 96-0054 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

A handwritten signature in black ink, appearing to read "Deval L. Patrick", written over the typed name below.

Deval L. Patrick
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

February 18, 1997

The Honorable Antonio O. Garza, Jr.
Secretary of State
State of Texas
Elections Division
P.O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Secretary:

This refers to your request that the Attorney General reconsider and withdraw the January 16, 1996, objection interposed under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, to Chapter 797 (1995), insofar as it authorizes agency employees to make determinations of an individual's eligibility to register based on citizenship information contained in agency files as part of the implementation of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg to 1973gg-10, for the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your request on December 19, 1996; supplemental information was received on January 22, 1997.

This also refers to the administrative rule promulgated by the Texas Secretary of State at 1 Tex. Admin. Code, Section 81.402, which authorizes employees of agencies where clients are required to update citizenship status at each renewal of service, change of address, or other contact with the agency to make determinations of an individual's eligibility to register, as part of the implementation of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg to 1973gg-10, for the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on December 19, 1996; supplemental information was received on January 22, 1997.

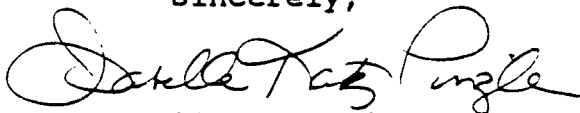
With regard to the proposed administrative rule, we understand based on the supplemental information your office provided on January 22, 1997, which was confirmed in a telephone conversation on February 14, 1997, between Ms. Colleen Kane-Dabu of our staff and Mr. Clark Kent Ervin of your office, that the administrative rule has not been finally adopted and that the earliest date that it can become final is February 21, 1997. A proposed change which is not finally enacted or capable of administration is not ripe for review by the Attorney General (with certain limited exceptions not applicable here). Accordingly, it would be inappropriate for the Attorney General to make a determination concerning your submission now. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.22(a) and 51.35). When this change is formally adopted, preclearance under Section 5 should be sought.

With regard to your request that the Attorney General reconsider the January 16, 1996, objection, the state has provided no new relevant information or legal argument in support of its request; as noted above, the proposed administrative rule, which appears to form the basis for the state's request, is not final and cannot be considered under Section 5 at this time. See 28 C.F.R. 51.45. Therefore, I remain unable to conclude, as I must under the Voting Rights Act, that the State of Texas has carried its burden of showing that the submitted change will not have a discriminatory effect. See Beer v. United States, 425 U.S. 130, 141 (1976); Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.48 and 51.52. Accordingly, on behalf of the Attorney General, I must decline to withdraw the objection to Chapter 797 (1995), insofar as it authorizes agency employees to make determinations of an individual's eligibility to register based on citizenship information contained in agency files.

As we previously advised, you may seek a declaratory judgment from the United States District Court for the District of Columbia that Chapter 797, insofar as it authorizes agency employees to make determinations of an individual's eligibility to register based on citizenship information contained in the agency's file, has 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. We remind you that until such a judgment is rendered by that court, the objection by the Attorney General remains in effect and the proposed change continues to be legally unenforceable. See Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas plans to take concerning these matters. If you have any questions, you should call Colleen Kane-Dabu (213-894-2931) of our staff. Refer to File Nos. 95-2017 and 96-4548 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

A handwritten signature in cursive script, reading "Isabelle Katz Pinzler".

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division