



U.S. Department of Justice

Civil Rights Division

*Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530*

APR 10 2009

Ms. Terri Burke
Executive Director
American Civil Liberties Union of Texas
P.O. Box 12905
Austin, Texas 78711-2905

Dear Ms. Burke:

This responds to your letter dated March 9, 2009, to Attorney General requesting that the Department of Justice give advice to Texas state officials concerning a bill pending in the Texas Legislature that will require voters to present photo identification at the polls.

Among the reasons that it would not be appropriate for the federal government to advise a state legislature regarding pending legislation is the fact that, as you correctly noted in your letter, a change of this kind is covered by Section 5 of the Voting Rights Act. Therefore, before a change such as one requiring photo identification as part of the voting process can be legally enforced in Texas elections, state officials will be required to comply with Section 5. This can be done through two different avenues.

Texas can submit a voting change to the Attorney General and, if no objection is interposed within 60 days of the receipt of a completed submission, the state may enforce the change. As an alternative, Texas officials can file an action in the United States District Court for the District of Columbia in which they would seek a declaratory judgment that the proposed change has neither the purpose nor will have the effect of discriminating on the basis of race, color, or membership in a protected language minority group. This means that the Department would be involved in either analyzing the submission or defending the United States in the declaratory judgment action. Accordingly, it would not be appropriate for the Department to provide advice to the Texas Legislature as to whether it should enact a photo identification requirement for Texas voters.

We hope this information is helpful. Please do not hesitate to contact this office if we may be of assistance with this, or any other matter.

Sincerely,

A handwritten signature in cursive script that reads "Christopher Coates". The signature is written in black ink and is positioned above the printed name.

Christopher Coates
Chief
Voting Section



March 9, 2009

Attorney General Eric Holder
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear General Holder,

The ACLU of Texas supports the request by Sen. Rodney Ellis of Houston that the U.S. Justice Department give advice on proposed legislation to require photo identification for Texas voters.

If passed, SB362 will no doubt increase the number of provisional ballots that are cast and also increase the number of votes that are rejected due to new identification requirements. In the last election, more than three-fourths of the provisional ballots cast were thrown out. This may suggest serious errors in our elections procedures. Voter ID will only add to the problem and cost more Texans their right to vote.

The ACLU of Texas requests that a representative from the Department of Justice testify during State Senate hearings the week of March 9, 2009.

We believe this legislation is a politically motivated solution in search of a problem as there is virtually no evidence of voter fraud in Texas. Passage of this legislation would place an unnecessary and, for some voters, a costly burden that could infringe on their right to vote.

We feel the provisions would violate the Voting Rights Act of 1965 and place an undue burden on minority voters. Further, we believe that Section 5 of the Voting Rights Act of 1965 would require Texas to get federal approval, i. e. "pre-clearance," before changing election procedures that affect minority voters.

Sincerely,

Terri Burke,
Executive Director
ACLU of Texas