



The Legislature State of Texas

May 6, 2009

Speaker Straus and Chairman Smith,

Please see the attached memorandum informing the House that the Committee on Elections should take public testimony on Senate Bill 362 in whatever final form the House committee is going to consider it. We personally ask that the committee hold a public hearing and afford our constituents the opportunity to testify on the merits of that proposal.


While some components of the bill may have been discussed previously in committee, the public has not had an opportunity to give voice to their opinions regarding the comprehensive new bill. This is only prudent, given the Voting Rights Act and the impact of this bill on every citizen in Texas.


Representative Rafael Anchia

Vice-Chair, Committee on Pensions, Investments & Financial Services


Representative Joaquin Castro

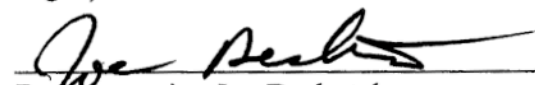
Vice-Chair, Committee on Higher Education


Representative Garnet Coleman

Chair, Committee on County Affairs


Representative Yvonne Davis

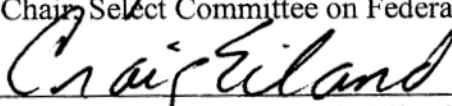
Chair, Committee on Urban Affairs

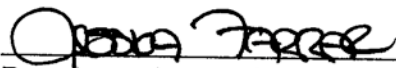

Representative Joe Deshotel

Chair, Committee on Business & Industry


Representative Jim Dunnam

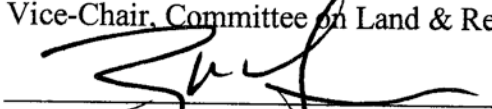
Chair, Select Committee on Federal Economic Stabilization Funding


Speaker Pro Tempore Craig Eiland

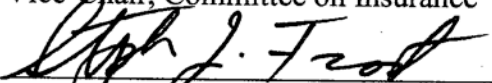


Representative Jessica Farrar

Vice-Chair, Committee on Land & Resource Management


Representative Trey Martinez Fischer

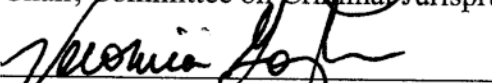
Vice Chair, Committee on Insurance


Representative Stephen Frost

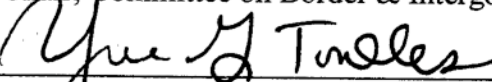
Vice-Chair, Committee on Public Safety


Representative Pete Gallego

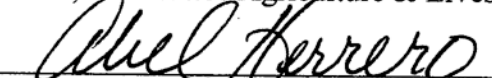
Chair, Committee on Criminal Jurisprudence


Representative Veronica Gonzales

Chair, Committee on Border & Intergovernmental Affairs


Representative Yvonne Gonzalez Toureilles


Chair, Committee Agriculture & Livestock


Representative Abel Herrero

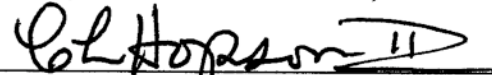
Vice-Chair, Committee on Human Services


Representative Scott Hochberg

Vice-Chair, Committee on Public Education


Representative Mark Homer

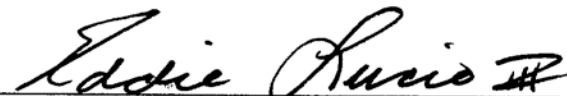
Chair, Committee on Culture, Recreation & Tourism


Representative Chuck Hopson

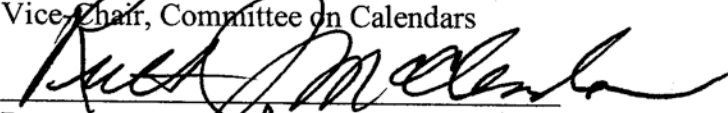
Chair, Committee on General Investigating & Ethics


Representative Donna Howard

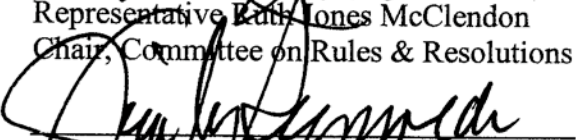
Vice-Chair, Committee on Culture, Recreation & Tourism



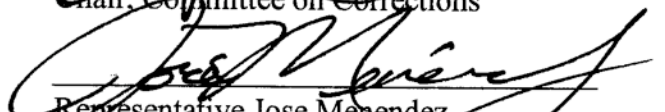
Representative Eddie Lucio, III
Vice-Chair, Committee on Calendars



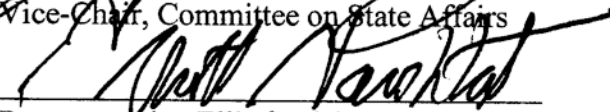
Representative Ruth Jones McClendon
Chair, Committee on Rules & Resolutions



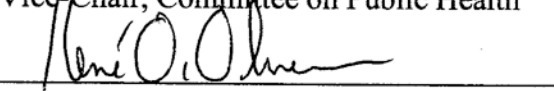
Representative Jim McKeynolds
Chair, Committee on Corrections



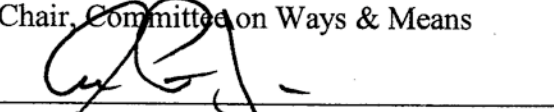
Representative Jose Menendez
Vice-Chair, Committee on State Affairs



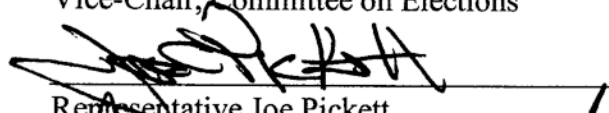
Representative Elliot Naishtat
Vice-Chair, Committee on Public Health



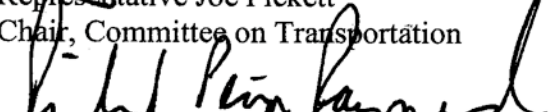
Representative Rene Oliveira
Chair, Committee on Ways & Means



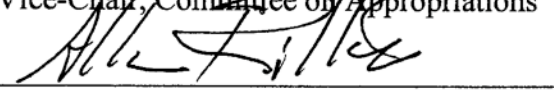
Representative Aaron Pena
Vice-Chair, Committee on Elections



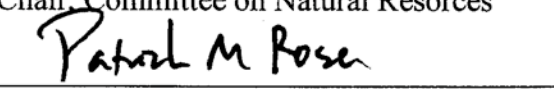
Representative Joe Pickett
Chair, Committee on Transportation



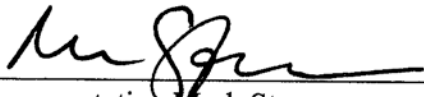
Representative Richard Pena Raymond
Vice-Chair, Committee on Appropriations



Representative Allan Ritter
Chair, Committee on Natural Resources

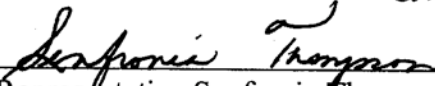


Representative Patrick Rose
Chair, Committee on Human Services



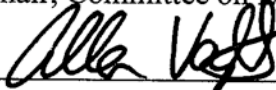
Representative Mark Strama

Chair, Committee on Technology, Economic Development, & Workforce



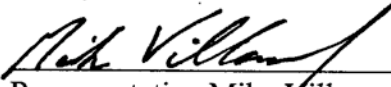
Representative Senfronia Thompson

Chair, Committee on Local & Consent Calendars



Representative Allen Vaught

✓ Chair, Committee on Defense & Veteran Affairs



Representative Mike Villarreal

Vice-Chair, Committee on Redistricting

MEMORANDUM

To: Interested Parties

From: J. Gerald Hebert
Voting Rights Attorney

Re: Preclearance and the Texas Voter ID Bill

Date: May 6, 2009

The Texas House Elections Committee has held hearings on a bill that would require voters to produce certain identification in order to vote. In recent days, it has been suggested that a bill different from one considered in the Elections Committee will be brought up and voted on.

If this happens, it is far more likely to doom the bill under the preclearance provisions of the Voting Rights Act. This is so for two reasons.

First, as the Chairman of the Elections Committee noted during the hearings, the public would have no opportunity to comment on the bill being newly considered. Public input, or at the very least, an opportunity to air the bill in the public and solicit public comment, is a hallmark of what the Justice Department would look for in reviewing any voter ID bill. For example, the DOJ regulations governing Section 5 preclearance (28 C.F.R. 51.28) make clear that publicity and public participation are important elements in reviewing a submission under the preclearance provisions of the Voting Rights Act:

(f) Publicity and participation. For submissions involving controversial or potentially controversial changes, evidence of public notice, of the opportunity for the public to be heard, and of the opportunity for interested parties to participate in the decision to adopt the proposed change and an account of the extent to which such participation, especially by minority group members, in fact took place.

Second, the procedural route that a bill takes is one of the keys to deciding whether a law is being enacted with a racially discriminatory purpose. See *Village of Arlington Heights v. Metropolitan Housing Authority*, 424 U.S. 252, 267 (1977). Under the Supreme Court's decision in *Arlington Heights*, any departures from normal or ordinary procedures is a signal that the bill being considered is motivated by a racially discriminatory purpose. As the U.S. Supreme Court has said: "Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role." 424 U.S. at 267. Because Texas has the burden of proof under the preclearance provisions of Section 5, taking up a different bill than the one that has been laid out in committee or previously in the House is an indicator that a racially discriminatory purpose is at work. Such a procedural "departure[]" from the normal procedural sequence" would be "evidence that improper purposes are playing a role" and would undermine the voter ID bill's chances of being precleared under Section 5 of the Voting Rights Act.