



U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

February 26, 2002

The Honorable Christopher S. Bond
United States Senate
Washington, D.C. 20510

Dear Senator Bond:

This letter responds to your letter of February 21, 2002, inquiring about the Department of Justice's ("Department") views on whether a covered jurisdiction, which implemented a change in voting procedure consistent with proposed Section 103(b)(2) of S. 565, would thereby violate Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. We interpret proposed Section 103(b)(2) as requiring persons to provide photographic or other identification, in certain circumstances, as a prerequisite to voting.¹ As discussed further below, assuming preclearance

¹Proposed Section 103(b)(2) of S. 565 states in relevant part:

(2) REQUIREMENTS. -

(A) IN GENERAL. - An individual meets the requirements of this paragraph if the individual -

(i) in the case of an individual who votes in person -

(I) presents to the appropriate State or local election official a current and valid photo identification; or

(II) presents to the appropriate State or local election official a copy of a current utility bill, bank statement, Government check, paycheck, or other Government document that shows the name and address of the voter; or

(ii) in the case of an individual who votes by mail, submits with the ballot-

(I) a copy of a current and valid photo identification; or

(II) a copy of a current utility bill, bank statement, Government check, paycheck, or other Government document that shows the name and address of the voter.

(B) PROVISIONAL VOTING. - An individual who desires to vote in person, but who does not meet the requirements of subparagraph (A)(i), may cast a provisional ballot under Section 102(a).

were needed for such a change, in the Department's view a change in voting procedure requiring voters to provide documentation of identity does not necessarily have the purpose or effect of denying or abridging the right to vote on account of race or color. Far from automatically violating Section 5, identification requirements can be an efficient and effective means of combating voter fraud.

Initially, we assume for the purpose of this letter that Section 103(b)(2) of S. 565 would require a change in pre-existing voting "qualifications, prerequisites, standards, practices, or procedures" cognizable under Section 5. It is far from clear that a federally mandated change in voting procedure, which granted the covered jurisdiction little or no discretion in implementing the change, even would be reviewable by the Department under Section 5. See, e.g., *Young v. Fordice*, 520 U.S. 273, 285-86 (1997). By the Department's reading, proposed Section 103(b)(2) appears to vest almost no discretion in local officials with regard to identification requirements; the forms of acceptable identification, for example, are enumerated in the statutory text.

Assuming for purposes of this letter that proposed Section 103(b)(2) is even subject to Section 5 review, we first note that, in responding to your letter, we have not examined the voting systems currently in place in all covered jurisdictions, and we reach no conclusions as to whether those systems are now compliant with proposed Section 103(b)(2), or whether any change in a particular jurisdiction would require Section 5 preclearance. After reviewing the text of proposed Section 103(b)(2), the Department concludes that, as written, nothing in it would require an objection under Section 5. First, identification is required for all voters, and the accepted forms of identification are designated (§ 103(b)(2)(A)(i)). Moreover, provisional balloting is provided for those who lack the required identification on election day (§ 103(b)(2)(A)(ii)). As to acceptable forms of identification, by the Department's reading, voters lacking photographic identification may nonetheless meet the requirement by presenting utility bills, bank statements, government checks, paychecks, or "other government documents" showing the name and address of the voter. Nothing in the Department's preclearance activities or other experience implies that minority voters would be less able than other voters to provide at least one of the documents accepted under this flexible requirement.

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- (3) INAPPLICABILITY. – Paragraph (1) shall apply in the case of a person –
- (A) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) and submits as part of such registration either –
 - (i) a copy of a current and valid photo identification; or
 - (ii) a copy of a current utility bill, bank statement, Government check, paycheck, or Government document that shows the name and address of the voter; or
 - (B) who is described in a subparagraph of section 6(c)(2) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4(c)(2)).

Thank you for giving the Department the opportunity to express its views on this important issue. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

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for DJB

Daniel J. Bryant
Assistant Attorney General