



U.S. Department of Justice

Civil Rights Division

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Office of the Assistant Attorney General

Washington, D.C. 20530

February 17, 1995

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

Dear Mr. Secretary:

This refers to the bilingual procedures to be used in the implementation of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg, 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. Other changes with respect to the NVRA implementation of the State of Texas, provided for by Administrative Rule 1 T.A.C. §81.401, were precleared by our letters of December 12, 1994, and February 2, 1995. Additional information with respect to your submission was received on December 19, 1994.

We have carefully considered the information that you have provided, as well as information provided by other interested persons. According to the 1990 Census, the state's 2,054,103 Hispanic voting age citizens constitute 18 percent of the state's total citizen voting age population. Of Hispanic voting age citizens, 86 percent speak Spanish at home and 33 percent require Spanish-language assistance to participate effectively in elections.

In considering whether the implementation of bilingual procedures satisfies Section 5 of the Voting Rights Act, the Attorney General will pay "particular attention . . . to the requirements of . . . Sections 4(f)(4) and 203(c) . . . of the Act . . . ." 28 C.F.R. 51.55(a). The Attorney General's guidelines for the implementation of Sections 4(f)(4) and 203(c) of the Voting Rights Act state that the test for compliance with regard to bilingual procedures is whether the jurisdiction has taken "all reasonable steps" to ensure that materials are provided in a way that allows members of the language minority group to be effectively informed of and participate effectively in voting-concerned activities, 28 C.F.R. 55.2(b)(1) and (2).

One step in ensuring that language minority members are able to participate effectively in voting-concerned activities is consultation with members of the applicable language minority group with respect to the translation of materials, 28 C.F.R. 55.19(b). In this regard, we note that although members of the language minority group were included in some of the meetings of Texas' National Voter Registration Task Force, they were consulted only minimally as to the actual translations of registration materials.

Another step in ensuring that language minority members are able to participate effectively in voting-concerned activities is providing materials in the language of the affected language minority group that are "clear, complete and accurate," 28 C.F.R. 55.19(b). Where even portions of the translations are unclear, misleading, incorrect, or incomplete, those who are relying on the translations will not be able to participate effectively in the process. Our examination of the proposed Spanish language materials reveals that some portions of the Spanish language translations are inconsistent with the English version, that there are numerous instances of misspelled Spanish words, and that there are instances of poor or incorrect Spanish word choice.

Because of these errors, those relying on the translations are at higher risk for misunderstanding the instructions and/or the forms than are those relying on the English versions. As a result, persons relying on the proposed Spanish language translations have an increased likelihood of having their registration forms rejected. In an effort to aid the Secretary of State's Office in identifying some of the more problematic aspects of the Spanish language translations, we have compiled the following list of problem areas. It should be noted, however, that this list is not inclusive of all of the problems we have identified:

With regard to the use of an agent, the English version specifically limits eligible agents to six specific family members, while the Spanish translation indicates that these six specific family members are examples of persons who are eligible to serve as agents;

Although both the English and Spanish instructions specify that the agent's relationship to the applicant is to be noted next to the agent's signature, only the English version repeats this instruction on the actual registration card;

On the registration card, the English asks for the city and county of the former residence, while the Spanish asks for the street address and county of the former residence;

Persons relying on the English version are asked to either print in ink or type, while those relying on the Spanish version are asked to write in ink or type; and

The instructions in English direct persons who have changed names to provide the former name. In Spanish they are instructed to use the former name.

Our investigation reveals that rejection of registration applications is particularly likely with regard to the translations pertaining to registration by agent. Because the Spanish language translation is misleading with regard to the identification of appropriate agents, those relying on it may select an ineligible agent. Because the Spanish version of the registration card provides no specific instruction below the space in which an agent is to designate his/her relationship to the applicant, those relying on it may omit the designation of the relationship of the agent from the form. Applications filled out by an ineligible agent or that do not designate the agent's relationship to the applicant will be rejected. Moreover, because there is a criminal penalty for false registration through an agent, applicants and/or agents relying on the Spanish language translations potentially could find themselves defending their attempt to register in a criminal action.

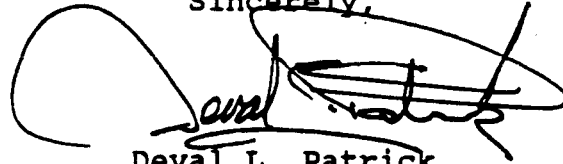
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the bilingual procedures

to be used as part of the state's NVRA implementation.

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, color or membership in a language minority group. 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 bilingual procedures for the implementation of the National Voter Registration Act of 1993 continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas plans to take concerning this matter. If you have any questions, you should call Ms. Colleen Kane (202-514-6336), an attorney in the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "Deval L. Patrick", written over a horizontal line. The signature is stylized and somewhat cursive.

Deval L. Patrick  
Assistant Attorney General  
Civil Rights Division