

DEC 10 1975

Honorable Mark White
Secretary of State
State of Texas
Capitol Station
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to S.B. 300 of 1975, voter registration procedures in the State of Texas, which was submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended in 1975. Your submission was received on October 31, 1975. Pursuant to your request we have given expedited consideration to this submission in accordance with Section 51.22 of our Section 5 guidelines (28 C.F.R. 51.22).

We have reviewed carefully the information, statistical data and other material submitted by you as well as information, comments and views provided by other interested persons. Except insofar as S.B. 300 requires a purge of all currently registered voters in Texas, the Attorney General does not interpose an objection to the changes involved. We feel a responsibility to point out, however, that Section 5 of the Voting Rights Act expressly provides that our failure to object does not bar any subsequent judicial action to enjoin the enforcement of these changes should such action become necessary.

Section 2 of S.B. 300 provides, among other things, that registrants who fail to reregister shall have their registration terminated on March 1, 1976. We recognize the State's interest in enacting legislation which promotes registration and, also, which utilizes a reasonable means of maintaining accurate registration records. However, our review of recent registration laws in Texas, e.g., the poll tax, annual registration, reregistration (S.B. 51 of 1971), in conjunction with our evaluation of S.B. 300, illustrates that the citizens of Texas have experienced several registration procedures within a ten-year period.

Under Section 5 of the Voting Rights Act the burden falls upon the submitting authority to demonstrate that voting changes, such as those here under submission, not only do not have a prohibited discriminatory purpose but will not have such an effect. Thus, as set forth in his Procedures For the Administration of Section 5 of the Voting Rights Act of 1965, Section 51.19 (28 C.F.R. 51.19), the Attorney General will refrain from objecting only if he is satisfied that the proposed change does not have the prohibited purpose or effect. If he is persuaded to the contrary or if he cannot satisfy himself that the change is without discriminatory purpose or effect, the guidelines state that the Attorney General will object.

Our analysis has revealed nothing to suggest a discriminatory purpose to the purge involved here. In addition, the State's proposals for minimizing the adverse effect of the reregistration are commendable. However, we cannot conclude that the effect of the total purge to initiate the reregistration program will not be discriminatory in a prohibited way.

With regard to cognizable minority groups in Texas, namely, blacks and Mexican-Americans, a study of their historical voting problems and a review of statistical data, including that relating to literacy, disclose that a total voter registration purge under existing circumstances may have a discriminatory effect on their voting rights. Comments from interested parties, as well as our own investigation, indicate that a substantial number of minority registrants may be confused, unable to comply with the statutory registration requirements of Section 2, or only able to comply with substantial difficulty. Moreover, representations have been made to this office that a requirement that everyone register anew, on the heels of registration difficulties experienced in the past, could cause significant frustration and result in creating voter apathy among minority citizens, thus, erasing the gains already accomplished in registering minority voters.

We have reviewed carefully the justifications submitted by the State in an effort to satisfy the State's burden of proof that the purge in question does not have the purpose or effect of denying or abridging voting rights on the basis of race or language minority status. We also have closely scrutinized the nature of the State's interest in implementing a state-wide purge to determine whether it is compelling and whether alternative means of accomplishing its purpose are available. Dunn v. Blumstein, 405 U.S. 330 (1972). Under all the circumstances involved, we are unable to conclude that a total purge is necessary to achieve the State's purpose. Likewise, we are unable to conclude, as we must under the Voting Rights Act, that implementation

of such a purge in Texas will not have the effect of discriminating on account of race or color and language minority status. For that reason, I must, on behalf of the Attorney General, interpose an objection to the implementation of the purge requirement of Section 2 of S.B. 300.

Should you decide, however, to implement the reregistration without the purge requirement and can at a later date demonstrate that it did not have an adverse effect on minority voting rights, we would welcome a request for reconsideration with appropriate supporting materials (see 28 C.F.R. 51.23).

Of course, as provided for by Section 5, you have the alternative of instituting an action in the United States District Court for the District of Columbia for a declaratory judgment that the change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. Should you decide to pursue such a course of action my staff and I will cooperate to expedite the matter in any way possible.

I am aware that there is now pending a lawsuit in the United States District Court for the Eastern District of Texas with respect to the subject matter of this submission. I am, therefore, taking the liberty of forwarding a copy of this letter to the Court.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division