PRECLEARANCE, ELECTION CONTESTS & ELECTIONEERING

presented by:

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A. PRECLEARANCE

I. The Voting Rights Act of '65

The Voting Rights Act of 1965 (the "Act") was designed to address issues of racial discrimination against voting. It prohibits discrimination based on race, and requires certain jurisdictions to provide bilingual assistance to language minority voters. The Act was created to "rid the country of racial discrimination in voting."[1] The murder of voting-rights activists in Philadelphia and Mississippi gained national attention, along with numerous other acts of violence and terrorism. Finally, the unprovoked attack on March 7, 1965, by state troopers on peaceful marchers crossing the Edmund Pettus Bridge in Selma, Alabama, en route to the state capitol in Montgomery, persuaded the President and Congress to overcome Southern legislators' resistance to effective voting rights legislation. President Johnson issued a call for a strong voting rights law and hearings began soon thereafter on the bill that would become the Voting Rights Act.

Congress determined that the existing federal anti-discrimination laws were not sufficient to overcome the resistance by state officials to enforcement of the 15th Amendment. The legislative hearings showed that the Department of Justice's efforts to eliminate discriminatory election practices by litigation on a case-by-case basis had been unsuccessful in opening up the registration process; as soon as one discriminatory practice or procedure was proven to be unconstitutional and enjoined, a new one would be substituted in its place and litigation would have to commence anew.

President Johnson signed the resulting legislation into law on August 6, 1965.[2] Section 2 of the Act, which closely followed the language of the 15th amendment, applied a nationwide prohibition against the denial or abridgment of the right to vote on the literacy tests on a nationwide basis.[3] Among its other provisions, the Act contained special enforcement provisions targeted at those areas of the country where Congress believed the potential for discrimination to be the greatest.

Section 5 jurisdictions covered by these special provisions has the effect of suspending the enactment or administration of any new voting law or regulation until such law or regulation has been preapproved or "precleared" by the federal government, either through the Attorney General or the District Court for the District of Columbia.[4] In addition, the Attorney General could designate a county covered by these special provisions for the appointment of a federal examiner to review the qualifications of persons who wanted to register to vote. Further, in those counties where a federal examiner was serving, the Attorney General could request that federal observers monitor activities within the county's polling place.[5] Section 5 of the Act was specifically crafted to address the ever-changing discriminatory practices and "shift the

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[1] *South Carolina v. Katzenbach*, 383 U.S. 301, 815 (1966).
[2] United States Department of Justice, "Introduction to Voting Rights Laws", (updated 7-25-2008), available at: *www.usdoj.gov*
[3] The Voting Rights Act of 1965, 42 U.S.C. §§ 1971-1974 (1994).
[4] *See Id., See also Katzenbach*, 383 U.S. at 316, 320.
[5] 42 U.S.C. §1973 (d) (1994).

advantage of time and inertia from the perpetrators of evil to its victims."[6] By design, Congress limited the applicability of section 5 to the parts of the country where discrimination persisted on a pervasive scale.[7]

II. The Preclearance Process

Section 5 ***freezes*** election practices or procedures in certain states until the new procedures have been subjected to review ("precleared") for compliance with the Act. This means that ***voting changes*** in covered jurisdictions may not be used until that review has been obtained. A covered jurisdiction is a political subdivision that falls under the provisions of the Act and must therefore comply with the "preclearance" regulations imposed by the Department of Justice (the "DOJ"). [8]

There are two alternative and independent means by which a municipality may seek federal preclearance. A city can obtain preclearance for a voting change by submitting the proposed change to the United States Attorney General, through the Civil Rights Division of the Department of Justice. Alternatively, a city can obtain preclearance for a voting change by filing a petition for a declaratory judgment in the United States District Court for the District of Columbia. As might be expected, the administrative preclearance process through the Attorney General is the most expeditious and cost-effective alternative.

DOJ regulations contemplate a very broad scope of a voting change that requires preclearance, stating that any "change affecting voting, even though it appears to be minor and indirect, returns to a prior practice or procedure, ostensibly expands voting rights, or is designed to remove the elements that caused objection by the Attorney General" must be precleared.

III. Examples

Some specific examples of voting changes that require preclearance are:

(a) Any change in qualifications or eligibility for voting.

(b) Any change concerning registration, balloting, and the counting of votes and any changes concerning publicity for, or assistance in, registration or voting.

(c) Any change with respect to the use of a language other than English in any aspect of the electoral process.

(d) Any change in the boundaries of voting precincts or in the location of polling places.

(e) Any change in the constituency of an official or the boundaries of a voting unit (e.g., through redistricting, annexation, de-annexation, incorporation, reapportionment,

[6] *See Katzenbach*, 383 U.S. at 316, 328.
[7] *Id*.
[8] 28 C.F.R. § 51.4 (2001).

changing to at-large elections from district elections, or changing to district elections from at-large elections).

(f) Any change in the method of determining the outcome of an election (e.g., by requiring a majority vote for election or the use of a designated post or place system).

(g) Any change affecting the eligibility of persons to become or remain candidates, to obtain a position on the ballot in primary or general elections, or to become or remain holders of elective offices.

(h) Any change in the eligibility and qualification procedures for independent candidates.

(i) Any change in the term of an elective office or an elected official or in the offices that are elective (e.g., by shortening the term of an office, changing from election to appointment, or staggering of terms).

(j) Any change affecting the necessity of, or methods for, offering issues and propositions for approval by referendum.

(k) Any change affecting the right or ability of persons to participate in political campaigns.[9]

In addition to the list above, the conduct of any particular ***special election*** may also be subject to preclearance by the DOJ to the extent any practices, procedures, voting locations, or any aspect of the conduct of the election, including the change of election date, differs from the most recent election.[10]

IV. Review by DOJ

The level of review executed by the DOJ upon receiving an administrative preclearance is the same standard as would be used in a court of law if the subdivision filed a Declaratory Judgment. The standard by which such voting changes are reviewed is "[w]hether the submitted change has the purpose or will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group." [11]

The jurisdiction can implement the change if the Attorney General affirmatively indicates no objection to the change, or if at the expiration of 60 days no objection to the submitted change has been interposed by the Attorney General.[12] It is the practice of the Department of Justice to respond in writing to each submission, specifically stating the determination made regarding each submitted voting change.[13]

[9] 28 C.F.R. § 51.13 (2001).
[10] 28 C.F.R. § 51.17(c) (2001).
[11] 28 C.F.R. §51.52(a) (2001).
[12] 28 C.F.R. § 51.10 (2001).
[13] *See,* "Introduction to Voting Rights Laws", (updated 7-25-2008), available at: *www.usdoj.gov.*

V. Submission Format

While no specific format for a submission is required, a submission should include the required contents (identified at 28 C.F.R. § 51.27) and the supplemental contents (identified at 28 C.F.R. § 51.28). *See attached lists from the CFRs included as Appendix A to this paper.*

It is important to include as much information relating to the demographic make-up of the political subdivision requesting the preclearance, as well as a good overview of the differences between the changes being requested by the subdivision to provide the DOJ with enough information regarding to the changes and the impact or non-impact on the political subdivision.[14]

In addition to supplying as much pertinent information as the subdivision can, it is crucial to submit the request for preclearance within the required time-frame for DOJ review. Once a submission is received by the DOJ, the Voting Rights staff has sixty (60) calendar days in which to preclear or object to the proposed change.[15] Therefore, in order to ensure that preclearance is obtained in a timely manner, a submission must be sent to the Department of Justice at least 60 days prior to the implementation of a voting change. If the submitting entity does not receive a written objection or approval within the 60 day timeline from the date of submission, the submission is deemed precleared.

VI. Consult Attorney or DOJ

Finally, when in doubt on whether to submit a preclearance on a particular voting change, the subdivision should contact the DOJ Voting Division directly, or seek the advice of legal counsel for more information. A change in any process, procedure, date, location, or method of voting from election to election must be submitted and precleared prior to implementation to prevent a lawsuit from the DOJ, or a private entity for violation of Section 5 of the Voting Rights Act.

VII. Recent DOJ Preclearance Issues

Below is a discussion of recent changes in the law that would require preclearance through DOJ. One of the most significant for small cities is the recent changes of HB 556, which allows cities located in counties with less than 20,000 in population to not have to provide more than one (1) accessible voting system during early voting and election day on elections where no federal offices are on the ballot.

House Bill 556, passed by the 80th Legislature, amended the Texas Election Code by adding Section 61.013, which concerns voting equipment accessibility requirements. Prior law required

[14] 28 C.F.R. §§ 51.26(d), 51.27(a)-(c), 51.35 (2001).
[15] 28 C.F.R. § 51.9(a) (2001). If the DOJ requests additional information, a new sixty (60) day time period commences upon the Department's receipt of the requested information from the covered jurisdiction. *See* 28 C.F.R. § 51.37 (2001).

every county and political subdivision to provide at least one accessible electronic voting system in each polling place for all elections.

Section 61.013 relaxes this requirement for certain political subdivisions conducting elections which do not contain a federal office on the ballot. For elections in which a federal office is not on the ballot, a county or a political subdivision located within a county with a population described below is not required to meet the strict requirements of Texas Election Code Section 61.012(a)(1)(c) - use of voting accessible machines in each polling place.

1. Counties with a population of less than 2,000 are exempt from the requirement of providing accessible electronic voting systems. Political subdivisions located in a county with a population of less than 2,000 are exempt from the requirement of providing accessible electronic voting systems. However, a voter with a disability may request a reasonable accommodation by the 21st day before election day with the early voting clerk.

    - A reasonable accommodation may include providing an audio tape of the ballot for the voter or a template which lies over the ballot and allows a voter with visual impairment to vote independently and in privacy.

2. Counties with a population of 2,000 or more, but less than 5,000, must provide at least one accessible electronic voting system on election day. Political subdivisions located in a county with a population of 2,000 or more, but less than 5,000, must provide at least one electronic voting system on election day.

3. Counties with a population of 5,000 or more, but less than 10,000, must provide at least one electronic voting system on election day and during the period for early voting by personal appearance. Political subdivisions located in a county with a population of 5,000 or more, but less than 10,000, must provide at least one electronic voting system on election day and during the period for early voting by personal appearance. The logical location would be the main early voting clerk's office on election day and the main early voting polling place during early voting.

4. Counties with a population of 10,000 or more, but less than 20,000, may provide fewer accessible voting stations if they comply with the requirements set out below. Political subdivisions located in a county with a population of 10,000 or more, but less than 20,000, may provide fewer accessible voting stations if they comply with the following:

    - Submit an Application of Undue Burden Status to the Secretary of State showing that compliance with Section 61.012(a)(1)(c) would cause an undue burden on the political subdivision by increasing the costs associated with the election by at least 25% as compared to the costs of the last general election held by the subdivision before January 1, 2006.
    - If the application is approved, the entity will provide:
        - At least one accessible electronic voting system on election day and during the period of early voting by personal appearance; and

- If the subdivision has branch early voting locations, one mobile accessible electronic voting system to be deployed at least once to each branch early voting polling place.

All political subdivisions subject to Section 61.013 must: 1) submit an application (or provide notice as applicable) to the Texas Secretary of State no later than 90 days prior to election day; 2) publish notice in a newspaper of general circulation not later than the 15th day before the start of early voting by personal appearance of the location of each polling place that will contain the electronic voting system (if applicable); and 3) preclear such change with the U.S. Department of Justice.

For your convenience the address for submissions is:

U.S. Department of Justice
Civil Rights Division/Voting Section
950 Pennsylvania Ave., NW
Voting Section, NW
Washington, DC 20530
(202) 307-2767
1-800-253-3931
Fax: (202) 307-3961

B. ELECTIONEERING

I. Limits on People

Texas Local Government Code provides a criminal penalty for individuals, including candidates, who stand, loiter or "electioneer" within 100 feet of a door or entry way to a polling place during early voting hours and during hours of voting on election day.[16] In addition, electioneering also constitutes operating a sound amplification device or sound truck within 1,000 feet of a building in which a polling place is located[17]. Electioneering includes wearing campaign propaganda, holding campaign material not for use in selecting a candidate, verbally advocating for a candidate or proposition, operating a sound amplification device for the purpose of making a political speech or advocating for a candidate or proposition. Electioneering laws are designed to target pressure tactics by professionals and are not aimed at the average voters.

The most taxing aspect of the electioneering provision to enforce or apply relates to candidates and voters. Many times candidates feel a sense of entitlement to enter the polling location despite having already voting merely because they are on the ballot or are incumbents in the race. Generally, candidates are allowed to enter the polling place from time to time if they are assisting a voter with voting or are providing transportation assistance to a voter.[18] However, aside from that exception, or the exception of an incumbent being in a polling place to conduct

[16] Tex.Loc.Gov't.Code Ann.§§61.003, 85.036 (Vernon 2007).
[17] *Id.* §61.004.
[18] *See, Id.* §64.032.

official business[19], a candidate is not allowed in or within 100 feet of a polling place with any type of campaign material. In addition to candidate passion to be near a polling place, candidate campaign workers are the next most difficult group of people to enforce electioneering provisions against.

Campaign workers are also your regular voter, and as such, they can be zealous advocates for their candidates; the typical campaign worker signs on to support a candidate in every possible way leading up to the election and most aggressively on election day. Campaign workers generally always wear campaign materials such as buttons, t-shirts, hats, caps and other paraphernalia and are also largely involved in bringing voters, who are otherwise unable to reach a polling place, to the polling place to vote. Generally, upon entrance into the polling place, a campaign worker is asked to remove all election campaign material before bringing in or assisting a voter and the voter is also required to remove any campaign material as well, with the exception of any written material the voter may need to assist him/her in casting a vote.[20] It is important to note that prior to 1995, no written communication of any kind, including sample ballots or informational sheets about candidates, was allowed in the polling place. That prohibition was removed after a court case ruled that preventing a voter from bringing in informational material to assist in casting an educated vote was a violation of a voter's constitutional first amendment right.[21]

II. First Amendment Issues

Many times, the request from an election worker to a voter to remove or cover campaign paraphernalia raises a controversial issue in the minds of some voters of the First Amendment Right to Freedom of Speech. Many voters feel that wearing campaign material such as a campaign button, t-shirt, or cap is a silent expression of speech protected by the First Amendment of the Constitution of the United States. Voters across Texas have gone to lengths of writing legal documentation supporting the move to declare electioneering statutes unconstitutional and advocate that allowing an individual voter to wear a political message button to the polling place is not the type of illegal campaigning intended to be prohibited by the statute.[22] Laws that prohibit a voter from wearing a political message button to the polls have been ruled by some courts to be content-based restrictions and are closely scrutinized by courts and activists in favor of declaring such laws unconstitutional.[23]

The right to vote is considered to be one of the most important forms of free speech and as such, the move against electioneering prohibitions strengthens each election cycle, especially around National elections, such as Presidential Elections. The constitutional argument is possibly one of the main reasons why enforcing or applying the electioneering provision of the Election Code to candidates and voters has consistently proven to be most difficult for election workers across

[19] *See*, *Id.* §61.001.
[20] *See*, *Id.* §61.011.
[21] *Cotham v. Garva*, 905 F. Supp. 389 (S.D. Tex.1995).
[22] Kimberley J. Tucker, *Article: "You Can't Wear That to Vote": The Constitutionality of State Laws Prohibiting the Wearing of Political Message Buttons at Polling Places*, 32 T. Marshall L. Rev. 61 (2006).
[23] *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (finding that the right to vote is regarded as a fundamental political right).

Texas. However, there are currently no movements in Texas law to abolish the electioneering provisions of the Election Code.

III. Exit Polling & Petition Signature Gathering

Other issues that are raised under the provision of electioneering are exit polling and petition signature gathering outside a polling place. Exit polling is a poll taken from voters upon their exit from a polling location. Unlike an opinion poll, which asks whom the voter plans to vote for or some similar formulation, an exit poll asks whom the voter actually voted for.[24] The Texas Secretary of State has recently issued a memorandum on this matter to state that non-disruptive exit polling is permissible inside the 100 foot marker and that the election judge of a polling place maintains the discretion to determine if the exit polling constitutes either "1) loitering in violation of Section 61.003 (a) of the Code, or 2) a disruption of order or a contribution to a breach of the peace at the polling place in violation of Section 32.075 of the Code."[25] Petition signature gathering however, is not permitted inside the 100 foot marker of an entrance to a polling place and the Secretary of State stated in a memorandum dated October 22, 2008 that "petition signature gathering is considered electioneering"[26].

IV. Limits on Cities

City clerks, officers and elected officials must also be mindful of not violating electioneering provisions by circulating or making available a publication created by the city to explain or provide factual information about a specific election. Cities must defer to the ethical regulations relating to election material when creating fact-specific documents to convey the purpose of a particular election. The Election Code provides a criminal offense for an officer or employee who spends or authorizes the expenditure of public funds for political advertising.[27] Political advertising has been defined to include communications supporting or opposing a particular candidate, or a measure or proposition.[28] The Texas Ethics Commission has provided an informational publication highlighting the main points that make up political advertising and the regulations that must be adhered to, to ensure that violations of the law do not occur.

Public misuse of funds generally occurs when a city creates a fact-specific publication to issue to voters within the city, but somewhere along the lines, the publication turns to a political advertisement. Mere use of city letterhead will not automatically trigger a violation of the Election Code; however, if the content and nature of the publication does not remain fact specific, printing such a publication on city letterhead using city staff and city funds to create and publish the document will cross the line and create a violation of the Code for the city.

V. Factors Relating to Misuse of Public Funds

Some key factors to keep in mind when creating a fact sheet about a particular election:

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[24] FAQ, Questions about Exit Polls, Pollster.com, available at *http://www.pollster.com/faq/faq_questions_about_exit_polls_1.php.*

[25] Texas Secretary of State Memorandum: *"Permissibility of Exit Polling, Petition Signature Gathering at Polling Places, and Firearms in the Polling Place"*, issued October 19, 2006.

[26] Texas Secretary of State Memorandum: "Petition Signature Gathering within the Vicinity of Polling Place", issued October 22, 2008.

[27] Tex.Elec.Code Ann §255.003 (Vernon 2007).

[28] *See, Id*. §251.001 (16).

- What is the content of the publication?
- Are there any subjective terms such as "support", "oppose", "strongly advise" "would be great for the city", etc?
- Are there any objective terms such as "We can legally provide you with information, but cannot advocate that you vote "For" or "Against" the proposition", etc?
- Where does the publication appear?
- What is the intent of the publication?[29]

Keeping the above factors in mind when creating a fact sheet and requesting legal counsel to review the document prior to distribution will ensure that the city does not cross the fine line of improper use of public funds to politically advertise. For example, a fact sheet created to provide voters of a city with impartial information relating to a tax freeze election will not be viewed as a violation of the provisions of the Election Code, if the preparation involves review and edits from various branches of the city, i.e. City Council, city staff, legal counsel, etc.; objective language in the material which neither advocates for the proposition, nor opposes the proposition; if the document contains any emphasis, such as the use of bolding or underlining particular phrases or words, ensure that the emphasis remain purely factual and educational in nature; and ensure that the facts provided are relevant to the election and adequately convey factual information to the voters in an impartial way.

After a fact sheet has been created, the city may distribute the information to voters prior to the election through the mail system or by posting it outside city hall as it would any other informational posting; however, cities must keep in mind that the publication should not be distributed to the voters at a polling place during early voting or on election day. The Texas Secretary of State has informally opined that such conduct may rise to the level of electioneering and should be avoided. It is important to note the limits on cities when creating publications to educate the voting public on election related matters. Knowing such information and understanding the guidelines will ensure proper compliance with the laws of this State.

C. ELECTION CONTESTS

I. Statutory Basis

Title 14 of the Texas Election Code lays the foundation for a candidate seeking to contest an election in which he/she was an opposing candidate and lost the election[30]. Generally, under the provisions of the Election Code, a candidate contesting an election can only contest the election on two basis: 1) illegal votes were counted; or 2) an election officer or other person officially involved in the administration of the election prevented eligible voters from voting or failed to count legal votes or engaged in other fraud or illegal conduct.[31] In addition to contesting an election for an office, the Election Code also provides an avenue for a voter to contest a measure or proposition election.[32]

[29] Texas Ethics Commission Publication: *"Political Advertising: What You Need To Know"*, revised April 11, 2008.
[30] *See, Id.* §232.002.
[31] *See, Id.* §221.003.
[32] *See, Id.* §232.002.

II. Most Common Examples

The most common type of election contest however is the contest for public office after an election. Generally, a losing candidate will assert an election contest after exhausting the ability to request a recount under the Election Code. A recount is requested in most cases where the vote differences between the winning candidate and the losing candidate is very tight and the losing candidate feels the votes were not counted properly, or that there was an error on the part of the election workers.[33] The deadline to submit a petition in district court for a contest is generally thirty (30) days after the date the official result is determined (canvassed)[34]. For specific elections such as primaries, and general or special election runoffs, the deadline to submit a petition to contest the election is ten (10) days after date the official result has been determined.[35]

III. Burden

The burden of proving illegality or fraud in an election contest is on the contestant[36]. Not only must the contestant prove that voting irregularities were present, but also that they did in fact materially affect the results of the election. It must be shown that a ". . . different result would have been reached by counting or not counting certain specified votes or irregularities were such as to render it impossible to determine the will of the majority of the voters participating."

IV. Process & Procedures

In election contests, the Election Code provides the procedure by which a trial court can ascertain the true outcome of the contested election. Section 221.009 provides that if the number of illegal votes is equal to or greater than the number of votes necessary to change the outcome of an election, the court may declare the election void without attempting to determine how each voter voted.[37] A voter who cast an illegal vote may be compelled to disclose the name of the candidate for whom he or she voted.[38] If the court can ascertain the candidate for which an illegal vote was cast, it must subtract the vote from the official total for the candidate.[39] After following this procedure, if the court can ascertain the true outcome of the election, the court shall declare the outcome. If not, the court shall declare the election void.[40]

An illegal vote can include a vote cast from an individual who was not a resident of the territory conducting the election as required under the Election Code, or from an individual who is not a resident of this State or a citizen of this country.[41] Residency under the Election Code is an elastic one and is extremely difficult to define.[42] Section 1.015 of the Election Code provides that "'residence' means domicile, that is, one's home and fixed place of habitation to which he

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[33] *See*, Id. §212.022.
[34] *See*, Id. §232.008.
[35] *Id.*
[36] *Wright v. Board of Trustees of Tatum Ind. School Dist*., 520 S.W.2d 787 (Tex.Civ.App. -- Tyler 1975, writ dism'd).
[37] Tex.Elec.Code Ann§221.009 (Vernon 2007).
[38] *Id.*
[39] *See, Id*. §221.011 (a).
[40] *See, Id*. §221.012(b).
[41] *See, Id.* §11.001.
[42] *Mills v. Bartlett*, 377 S.W.2d 636, 637 (Tex. 1964).

intends to return after any temporary absence."[43] Residency is determined in accordance with the common law, except as otherwise provided by the Code.[44]

A person does not lose his or her residence by leaving home temporarily.[45] A person does not acquire a residence in a place to which he or she has come temporarily and without the intention of making that place his or her home.[46] The focus in determining the residence of a voter is on the voter's home and fixed place of habitation.[47] "Intention and residence are important evidentiary factors, and a temporary move from one place to another will neither create a new residence nor lose an old one."[48] In assessing presence, the cases have considered such conduct as where the voter sleeps and keeps clothes and furniture, and the length of time spent in the alleged residence.[49]

V. Forms of Evidence

The most common form of evidence to support allegations in an election contest are ballots cast during early voting and on election day, including any overseas ballots and ballots received by mail. Generally, the contestant requests the trial court to open all ballot boxes containing not only ballots cast, but ballots that were destroyed, or spoiled during the course of the election.[50] There is statutory authority allowing the trial court to open the ballot boxes and recount the votes in an election contest.[51] If an inspection of the ballots shows that the outcome of the final canvass was not the true outcome because there was a mistake in the counting of the ballots or because some votes were cast illegally, then the election may be declared void and the remedy granted may be a new election. For the election to be declared void, the number of illegal votes must be equal to or greater than the number of votes necessary to change the outcome of the election.[52]

When the contestant contends that the election judge rejected votes that should have been accepted, it has long been the rule to presume that each of the rejected ballots was cast by an illegal voter.[53] Accordingly, an election judge is presumed to have acted properly in receiving or rejecting a ballot. The contestant has the heavy burden of overcoming this presumption.[54] The generally established rule to overcome the presumed correctness of the election judge's determinations is for the contestant to show by clear and satisfactory evidence that each of the voters of rejected ballots were legally qualified voters in every respect and that each of said rejected ballots was properly cast.[55]

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[43] Tex. Elec. Code Ann. §1.015 (Vernon 2007)
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Alvarez v. Espinoza*, 844 S.W.2d 238, 242 (Tex. App.--San Antonio 1992, writ dism'd w.o.j.).
[48] *Id*. at 247.
[49] *Id.*
[50] *Slusher v. Streeter*, 896 S.W.2d 239, (Tex. App.--Houston [1st Dist.] 1995, no writ).
[51] Tex.Elec.Code Ann. *§221.008 (Vernon 2007).*
[52] Tex.Elec.Code Ann. §221.009(b) (Vernon 2007).
[53] *Tiller v. Martinez*, 974 S.W.2d 769, 772 (Tex. App.--San Antonio 1998, pet. dism'd w.o.j.).
[54] *Id.*
[55] *Id.*

APPENDIX A- U. S. DEPARTMENT OF JUSTICE SUBMISSION CONTENTS

28 C.F.R. §51.27 - Required contents.

Each submission should contain the following information or documents to enable the Attorney General to make the required determination pursuant to section 5 with respect to the submitted change affecting voting: (a) A copy of any ordinance, enactment, order, or regulation embodying a change affecting voting.

(b) A copy of any ordinance, enactment, order, or regulation embodying the voting practice that is proposed to be repealed, amended, or otherwise changed.

(c) If the change affecting voting either is not readily apparent on the face of the documents provided under paragraphs (a) and (b) of this section or is not embodied in a document, a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting.

(d) The name, title, address, and telephone number of the person making the submission.

(e) The name of the submitting authority and the name of the jurisdiction responsible for the change, if different.

(f) If the submission is not from a State or county, the name of the county and State in which the submitting authority is located.

(g) Identification of the person or body responsible for making the change and the mode of decision (e.g., act of State legislature, ordinance of city council, administrative decision by registrar).

(h) A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change.

(i) The date of adoption of the change affecting voting.

(j) The date on which the change is to take effect.

(k) A statement that the change has not yet been enforced or administered, or an explanation of why such a statement cannot be made.

(l) Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change.

(m) A statement of the reasons for the change.

(n) A statement of the anticipated effect of the change on members of racial or language minority groups.

(o) A statement identifying any past or pending litigation concerning the change or related voting practices.

(p) A statement that the prior practice has been precleared (with the date) or is not subject to the preclearance requirement and a statement that the procedure for the adoption of the change has been precleared (with the date) or is not subject to the preclearance requirement, or an explanation of why such statements cannot be made.

(q) For redistrictings and annexations: the items listed under 51.28 (a)(1) and (b)(1); for annexations only: the items listed under 51.28(c)(3).

(r) Other information that the Attorney General determines is required for an evaluation of the purpose or effect of the change. Such information may include items listed in 51.28 and is most likely to be needed with respect to redistrictings, annexations, and other complex changes. In the interest of time such information should be furnished with the initial submission relating to voting changes of this type.

28 C.F.R. §51.28- Supplemental contents.

Review by the Attorney General will be facilitated if the following information, where pertinent, is provided in addition to that required by 51.27.

(a) Demographic information. (1) Total and voting age population of the affected area before and after the change, by race and language group.

If such information is contained in publications of the U.S. Bureau of the Census, reference to the appropriate volume and table is sufficient.

(2) The number of registered voters for the affected area by voting precinct before and after the change, by race and language group.

(3) Any estimates of population, by race and language group, made in connection with the adoption of the change.

(4) Demographic data provided on magnetic media shall be based upon the Bureau of the Census Public Law 94171 file unique block identity code of state, county, tract, and block.

(5) Demographic data on magnetic media that are provided in conjunction with a redistricting shall be contained in a table of equivalencies giving the census block to district assignments in the following format: (i) Each census block record (including those with zero population) will be followed by one or more additional fields indicating the district assignment for the census block in one or more plans.

(ii) All district assignments in the plan fields shall be right justified and blank filled if the assignment is less than four characters.

(iii) The file structure shall be as follows:

Field reference name Length Data type ----------

State..... STATEFP..... 2 Numeric.

County..... CNTY..... 3 Numeric.

Tract..... TRACT/BNA..... 6 Alpha/ Numeric.

Block..... BLCK..... 4 Alpha/ Numeric.

Plan 1 District..... User supplied.. 4 Alpha/ Numeric.

Plan 2 District..... User supplied.. 4 Alpha/ Numeric.

Plan 3 District, etc..... ....

Plan n District..... User supplied.. 4 Alpha/ Numeric.

(iv) State and county shall be identified using the Federal Information Processing Standards (FIPS55) code.

(v) Census tracts shall be left justified, and census blocks shall be left justified and blank filled if less than four characters.

(vi) Unused plan fields shall be blank filled.

(vii) In addition to the information identified in 51.20 (c) through (e), the documentation file accompanying the block level equivalency file shall contain the following information: (A) The file structure.

(B) The total number of plans.

(C) For each plan field, an identification of the plan (e.g., state senate, congressional, county board, city council, school board) and its status or nature (e.g., plan currently in effect, adopted plan, alternative plan and sponsors).

(D) The number of districts in each plan field.

(E) Whether the plan field contains a complete or partial plan.

(F) Any additional information the jurisdiction deems relevant such as bill number, date of adoption, etc., and a listing of any modifications the submitting authority has made that alter the structure of the TIGER/line geographic file.

(b) Maps. Where any change is made that revises the constituency that elects any office or affects the boundaries of any geographic unit or units defined or employed for voting purposes (e.g., redistricting, annexation, change from district to at-large elections) or that changes voting precinct boundaries, polling place locations, or voter registration sites, maps in duplicate of the area to be affected, containing the following information: (1) The prior and new boundaries of the voting unit or units.

(2) The prior and new boundaries of voting precincts.

(3) The location of racial and language minority groups.

(4) Any natural boundaries or geographical features that influenced the selection of boundaries of the prior or new units.

(5) The location of prior and new polling places.

(6) The location of prior and new voter registration sites.

(c) Annexations. For annexations, in addition to that information specified elsewhere, the following information: (1) The present and expected future use of the annexed land (e.g., garden apartments, industrial park).

(2) An estimate of the expected population, by race and language group, when anticipated development, if any, is completed.

(3) A statement that all prior annexations subject to the preclearance requirement have been submitted for review, or a statement that identifies all annexations subject to the preclearance requirement that have not been submitted for review. See 51.61(b).

(d) Election returns. Where a change may affect the electoral influence of a racial or language minority group, returns of primary and general elections conducted by or in the jurisdiction, containing the following information: (1) The name of each candidate.

(2) The race or language group of each candidate, if known.

(3) The position sought by each candidate.

(4) The number of votes received by each candidate, by voting precinct.

(5) The outcome of each contest.

(6) The number of registered voters, by race and language group, for each voting precinct for which election returns are furnished.

Information with respect to elections held during the last ten years will normally be sufficient.

(7) Election related data containing any of the information described above that are provided on magnetic media shall conform to the requirements of 51.20 (b) through (e). Election related data that cannot be accurately presented in terms of census blocks may be identified by county and by precinct.

(e) Language usage. Where a change is made affecting the use of the language of a language minority group in the electoral process, information that will enable the Attorney General to determine whether the change is consistent with the minority language requirements of the Act. The Attorney General's interpretation of the minority language requirements of the Act is contained in Interpretative Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 28 CFR part 55.

(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. Examples of

materials demonstrating public notice or participation include: (1) Copies of newspaper articles discussing the proposed change.

(2) Copies of public notices that describe the proposed change and invite public comment or participation in hearings and statements regarding where such public notices appeared (e.g., newspaper, radio, or television, posted in public buildings, sent to identified individuals or groups).

(3) Minutes or accounts of public hearings concerning the proposed change.

(4) Statements, speeches, and other public communications concerning the proposed change.

(5) Copies of comments from the general public.

(6) Excerpts from legislative journals containing discussion of a submitted enactment, or other materials revealing its legislative purpose.

(g) Availability of the submission. (1) Copies of public notices that announce the submission to the Attorney General, inform the public that a complete duplicate copy of the submission is available for public inspection (e.g., at the county courthouse) and invite comments for the consideration of the Attorney General and statements regarding where such public notices appeared.

(2) Information demonstrating that the submitting authority, where a submission contains magnetic media, made the magnetic media available to be copied or, if so requested, made a hard copy of the data contained on the magnetic media available to be copied.

(h) Minority group contacts. For submissions from jurisdictions having a significant minority population, the names, addresses, telephone numbers, and organizational affiliation (if any) of racial or language minority group members residing in the jurisdiction who can be expected to be familiar with the proposed change or who have been active in the political process.