

Roger Williams
SECRETARY OF STATE
State of Texas

July 13, 2006

U.S. District Court
Eastern District of Texas
Marshall Division
Office of the Clerk
100 E. Houston, Room 125
Marshall, Texas 75670

Re: League of United Latin American Citizens, et al. v. Perry, et al.
Cause Number 2:03-CV-354

To the Honorable Court for the Eastern District of Texas:

This letter is filed to inform the Court of the mandatory election deadlines contained in the Texas Election Code, the relevant federal deadlines (especially concerning disabled voters and overseas military voters), and the urgency for timely resolution of this case. Because of these constraints, a Court-drawn map would need to be in place by August 7, 2006, to enable Texas to conduct elections that comply with federal and state law.¹

A new map would need to be in place by August 7, 2006, in order to allow time for: (1) a new Court-ordered candidate filing period; (2) the counties that contain newly-split voting precincts to select an additional polling location within that precinct to conduct the congressional election in the additional district; and (3) the Department of Justice to preclear the selection of the new polling locations. The Secretary of State could then certify the ballot on September 6, as required by Texas law, and voting machines in the affected districts could be reprogrammed accordingly.

As you may be aware, in *In Re Francis*, 186 S.W 3d 534 (Tex. 2006), the Supreme Court of Texas considered whether or not the Texas Election Code provided a reasonable opportunity for a candidate to cure certain facial defects in signature petitions submitted to a party chair. While the merits of that case have no bearing in this case, the Court's decision so late in the

¹ If the Court chooses to impose a new map, the Office of the Secretary of State requests the Court order a five-day candidate filing period and adherence to the remainder of the state statutory timeline through November 7, 2006. Additionally, the Office of the Secretary of State would suggest that the Court institute and order a timeline for runoffs because the Texas Election Code has no provision for runoff elections following a general election. Moreover, to minimize voter confusion, the Court should order the election officials in the affected congressional districts to list the special election ballot before the general election ballot on the affected voting machines.

primary election cycle had significant repercussions throughout the state with regard to Texas' ability to comply with the Help America Vote Act of 2002 (HAVA).²

The *In Re Francis* opinion was handed down on January 27, 2006, some 18 days after the deadline for the parties to certify names for the March Primary Ballot. The re-opening of official ballot certification set in motion a chain of events that ultimately resulted in several Texas counties not having accessible voting machines available for use for voters with disabilities during early voting for the primaries as required by HAVA.

The lack of lead-time for the various electronic voting machine vendors to program the electronic ballots – critically dependent on official certification of the names that will appear on the ballot – was largely due to the changes to the official ballot resulting from the holding in *In Re Francis*. The late decision placed the counties and vendors in the difficult position of recoding machines and reprinting ballots less than three weeks before early voting began. Such necessary steps delayed the mailing of ballots to military and overseas voters.

Due to the delay, the Secretary of State was forced to issue directives to the counties for the issuance of emergency ballots for early voting and to adjust the deadline for receiving and counting military and overseas ballots to insure Texas' compliance with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).³ Moreover, the moving of the deadline for receiving and counting military and overseas ballots forced yet another delay in programming for the primary run-off elections and publicizing additional directives for the use of emergency balloting procedures.

The three Texas-certified vendors have already begun to program the voting machines that HAVA requires Texas to use in the upcoming elections. While changes to any congressional districts will require every machine to be used in that district to be reprogrammed, the vendors are confident that they could complete that process if they are able to begin by September 6, 2006.

The September 6, 2006, deadline for preparing the voting machines also reflects the timing constraints Texas faces under UOCAVA, which ensures that overseas voters, including those in the military, can cast absentee ballots by mail. The official paper ballots to be used by overseas and military voters are printed from the coding entered into the machines.

The following timeline demonstrates the constraints on the upcoming election:

August 7	Having a new map by this date would permit the State to prepare for, and conduct, elections on November 7, 2006, that comply with federal and state law.
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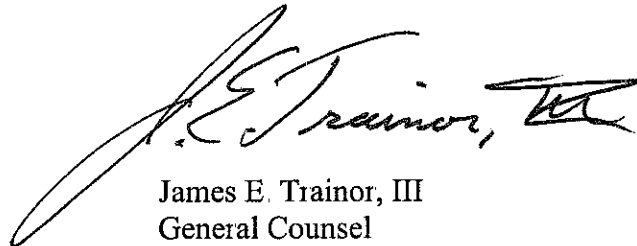
² 42 U.S.C. §§15301-15545.

³ 42 U.S.C. 1973ff.

- September 6** The deadline for beginning to reprogram the voting machines to be used in congressional districts altered in a Court-drawn plan. Also, the state law deadline for Secretary of State to certify the ballot.⁴
- September 23** The deadline for counties to mail ballots to overseas voters, including those in the military.⁵
- October 23** First day of early voting.⁶
- November 7** General Election Day.⁷
- January 3, 2007** 110th Congress will be convened, unless by law Congress designates a different day.⁸

In sum, if the Court orders a remedial plan for the upcoming congressional elections, the Office of the Secretary of State respectfully requests that it do so by August 7, 2006. Otherwise, Texas faces the possibility of non-compliance with HAVA and the necessity of adjusting the dates for receiving and counting military and overseas ballots to comply with UOCAVA

Respectfully submitted,



James E. Trainor, III
General Counsel

⁴ Tex. Elec. Code §161.008

⁵ Tex. Elec. Code §86.004.

⁶ Tex. Elec. Code §85.001(a).

⁷ Tex. Elec. Code §41.001.

⁸ U.S. Const. amend. XX, §2.