

Case No. 12-40914

IN THE
**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**VOTING FOR AMERICA, INC., PROJECT VOTE, INC.,
BRAD RICHEY, and PENELOPE MCFADDEN,**
Plaintiffs – Appellees,

v.

HOPE ANDRADE, Texas Secretary of State, in her official capacity,
Defendant – Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS, GALVESTON DIVISION
CASE No. 3:12-cv-44

**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF
FORMER GOVERNOR MARK WHITE, FORMER
LIEUTENANT GOVERNOR WILLIAM P. HOBBY, JR., AND
MEMBERS OF THE 69TH TEXAS LEGISLATURE AS AMICUS
CURIAE IN SUPPORT OF APPELLEE**

SUSAN HAYS
LAW OFFICE OF SUSAN HAYS, P.C.
1409 South Lamar, Ste. 357
Dallas, Texas 75215
(214) 557-4819
(214) 432-8273 (fax)
Counsel for Amicus Curiae

Amicus Curiae Former Governor Mark White, Former Lieutenant Governor William P. Hobby, Jr., and Members of the 69th Legislature seek leave to file their amicus brief pursuant to Federal Rule of Appellate Procedure 29(b). Counsel for the parties to this appeal, the Plaintiffs and Secretary of State Hope Andrade, give their consent to the filing of this amicus brief.

As the policy makers and legislators who developed and passed the modern Election Code in 1985, White, Hobby, and the Legislators have an interest in informing this Court of the intent of the Code as to voter registration and participation. Because the Secretary of State's interpretation of the 1985 Code is at issue in this litigation, the legislative history and intent described in this brief are relevant to the disposition of this case.

/s/ Susan Hays
SUSAN HAYS
LAW OFFICE OF SUSAN HAYS, P.C.
1409 South Lamar, Ste. 357
Dallas, Texas 75215
(214) 557-4819
(214) 432-8273 (fax)
Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I, Susan Hays, certify that today, November 23, 2012, a copy of this Unopposed Motion for Leave to file Brief of Amicus Curiae was served upon Jonathan Mitchell and Arthur D'Andrea, counsel for the Hope Andrade, Texas Secretary of State, via ECF.

/s/ Susan Hays
Susan Hays

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1409 South Lamar, Ste. 357
Dallas, Texas 75215
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(214) 432-8273 (fax)
Counsel for Amicus Curiae

SUPPLEMENTAL CERTIFICATE OF INTERESTED PERSONS

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The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 may have a potential interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

In addition to the persons and entities listed by the parties to this case:

Mark White, former Texas Governor and Secretary of State
William P. Hobby, Jr., former Lieutenant Governor
Gonzalo Barrientos, former Texas Senator
Kent Caperton, former Texas Senator
Eddie Cavazos, former Texas Representative
Paul Colbert, former Texas Representative
Lloyd Criss, former Texas Representative
Debra Danburg, former Texas Representative
Harold Dutton, Texas Representative
Chet Edwards, former Texas Senator
Smith Gilley, former Texas Representative
Robert J. “Bob” Glasgow, former Texas Senator
Juan “Chuy” Hinojosa, former Texas Representative and current Texas Senator
James E. “Pete” Laney, former Speaker of the Texas House of Representatives
Ted B. Lyon, former Texas Representative and Senator
Jesse Oliver, former Texas Representative
Carl A. Parker, former Texas Representative and Senator

Hector Uribe, former Texas Representative and Senator
Steve Wolens, former Texas Representative
Susan Hays, Law Office of Susan Hays, P.C., Counsel for Amicus Curiae

/s/ Susan Hays
SUSAN HAYS

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STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus Curiae are policy makers and legislators responsible for the enactment of the modern Texas Election Code in 1985. The amicus curiae are interested in this case because they believe the Secretary of State's interpretation of those laws is contrary to the policy they were enacted to implement: the liberalization of voter registration procedures so as to practically enfranchise the poor, African Americans, Latinos, and other disfavored groups with the power to vote in Texas elections.

In addition to all the amicus taking part in developing and implementing the Election Code, individual amicus played more prominent roles. Mark White was the Secretary of State from 1973 to 1977 when Texas finally began to reach out to minority voters and encourage voter registration. He then was elected Attorney General and later Governor. As Governor, he signed the Election Code into law when it passed in 1985.

William P. Hobby, Jr. was the Lieutenant Governor of Texas from 1973-1991. He was the presiding officer of the Texas Senate and chair of the Legislative Council. As chair, he twice appointed special study and advisory committees to develop and draft a bill for a modern Election Code.

Chet Edwards chaired the Election Code Study Committee that developed the 1985 law, S.B. 616, and led the development of its initial text, adopted by the

Committee with bipartisan, unanimous support. He also was the Senate author¹ of S.B. 616 and served as vice chair of the Senate State Affairs Committee's Subcommittee on Elections.

Ted Lyon also served on the Senate State Affairs Subcommittee on Elections. James E. "Pete" Laney served on the Texas House's Committee on Elections and later served as the Speaker of the Texas House. Debra Danburg was a member of the House of Representatives and testified to the House Committee on Elections during interim study hearings on expanding voter registration.

No funds were contributed by any party or party's counsel toward the preparation of this brief, nor did anyone other than the undersigned counsel and amicus curiae contribute funds toward the preparation of this brief.

¹ In Texas the "author" of a bill is the legislator who introduces the bill in the house of origin, while a bill's "sponsor" carries the bill in the other house.

² Session laws may be found at <http://www.lrl.state.tx.us/legis/billSearch/lrlhome.cfm>. Other legislative history that may be more difficult to find or more relevant to this brief is attached in

ARGUMENT

I. Court decisions, legislative changes, and executive action constituted the long march toward a reformed Texas Election Code.

Texas has not had an honorable history in its treatment of minority voters. *See LULAC v. Perry*, 548 U.S. 399, 439-40 (2006) (“Devices such as the poll tax, an all-white primary system, and restrictive voter registration time periods are an unfortunate part of this State’s minority voting rights history.”) (citation omitted). Leading up to the 1960s and 1970s, Texas used the poll tax, a patch-work of local practices, and other methods to intimidate, discourage, and punish African-American and Latino voters. The Election Code of 1951 stated as its purpose “to safeguard the purity of the ballot box,” included poll tax requirements, excluded from suffrage “paupers supported by the county” and federal soldiers, and defined “residence” in a way to discourage voting by federal employees, students, inmates, and those who worked with the poor or in an asylum. Act of May 28, 1951, 52nd Leg., R.S., ch. 492, § 1, 1951 Tex. Gen. Laws 1097, 1108-09, 1113-15 at arts. 1, 33, 34, 40-46.² Rather than a list of registered voters, the Election Code called for the county tax collectors to keep lists of “citizens in each precinct who have paid

² Session laws may be found at <http://www.lrl.state.tx.us/legis/billSearch/lrlhome.cfm>. Other legislative history that may be more difficult to find or more relevant to this brief is attached in the Appendix for the Court’s convenience. The Appendix also includes excerpts from the 1985 Election Code, S.B. 616. App. Tab F.

their poll tax.” *Id.* at § 54, 1119; *see also id.* at § 199, 1173 (primary voter list). The poll tax rolls served as a surrogate for a voter registration system from 1903 until a federal court struck down the system in the mid-1960s. *See United States v. Texas*, 252 F. Supp. 234, 240, 252 (W.D. Tex.), *aff’d* 384 U.S. 155 (1966).

A. Court decisions force Texas to shift from a poll tax system to create a voter roll to a voter registration system, a process accelerated by the executive and legislative branches of Texas government.

A series of Supreme Court decisions coupled with the Voting Rights Act prompted Texas to change its ways. *See e.g., Briscoe v. Bell*, 432 U.S. 404 (1977); *Bullock v. Carter*, 405 U.S. 134 (1972); *Carrington v. Rash*, 380 U.S. 89 (1965). Change happened through such court decisions coupled with piecemeal legislation throughout most of the 1960s and 1970s. In 1966, Texas abolished the poll tax system for eligible voter rolls and replaced it with a voter registration system. Act of Feb. 22, 1966, 59th Leg., 1st C.S., ch. 1, § 1, Tex. Gen. Laws 1. The new law designated the county tax assessor-collector for each county as the registrar of voters for each county. *Id.* at § 2, Sec. 41a, 2. The Act also provided for “deputy registrars” as deemed necessary by the tax-assessor-collector registrar but requiring them in larger counties to assist in registering voters. *Id.* at § 2, Sec. 52a(1)-(2), 9. These deputy registrars were not like the VDRs of today as they could both receive voter registration applications and immediately issue voter certificates. *Id.* In addition, deputy registrars were strictly limited to working only at authorized

locations, a restriction enforced by criminal penalty. *Id.* at Sec. 52a(4). The deputy registrars were not necessarily volunteers, but could only be paid if the county commissioners court approved compensation. *Id.* at Sec. 52a(5). Thus, citizens could not effectively volunteer to serve as deputy registrars as the local county registrar could decide whether deputies were “necessary” nor could deputy registrars target outreach to under-represented communities of potential voters.

Moreover, this reform was not warmly embraced by the Legislature that passed it. The effective date of this Act was contingent on either a constitutional amendment abolishing the poll tax passing or the federal courts upholding a district court decision striking down the poll tax. *Id.* at § 6, 10-11; *see United States v. Texas*, 252 F. Supp. 234 (W.D. Tex.), *aff’d* 384 U.S. 155 (1966) (affirming the district court decision on May 2, 1966).

In the early 1970s, this legislative attitude toward registering voters changed. In 1971, the Legislature revisited the voter registration system to encourage a “high level” of registration. Act of May 31, 1971, 62nd Leg., R.S., ch. 827, § 14, Tex. Gen. Laws 2509. Texas jettisoned its prior attitude that potential voters must come to the courthouse in county seats to register, replacing it with a policy of outreach. Deputy registrars would no longer be limited to only a few locations. Instead they could register voters “throughout the county and outside the county courthouse, for the convenience of persons desiring to register.” *Id.* at Sec. 52a(2). State and local

government employees could be deputized to register voters in any government offices. *Id.* at Sec. 52a(3). Moreover, the Legislature stated its intent that the registrar “in order to promote and encourage voter registrations” enlist “interested citizens and organizations” as deputy registrars “in such a way as to cover most effectively every section of the county” including even the residences of potential voters. *Id.* at Sec. 52a(4). This broad change to an outreach policy engaging citizens to register to vote brought with it a substantial limitation in deputy registrar powers as they now were designed to be citizen volunteers rather than strict deputies of the county voter registrar herself. Eliminated from the powers of the deputy registrars was the ability to issue voter certificates in addition to accepting voter registration applications. *Cf. id.* to Act of Feb. 22, 1966, 59th Leg., 1st C.S., ch. 1, § 1, Tex. Gen. Laws 1, 9 at Sec. 52(a)(1)-(2).

Executive action also pushed the widening of the practical franchise in Texas. The Voting Rights Act was extended to Texas because of language-based discrimination against Latinos. *See* USCA5 1346-47; *Briscoe*, 432 U.S. at 405-06. The new administration of Governor Dolph Briscoe worked with his appointee as Secretary of State, Mark White, to “clean house” vis-à-vis the voter registration system to “do it right” as White testified to the district court. USCA5 1347. Briscoe’s and White’s efforts were “to make certain that Texas was not going to be viewed as part of the old South and part of the discriminatory structure that existed

there” to disenfranchise disfavored voters. *Id.* Part of their efforts was to make a change to voter registration and implement a very “aggressive outreach program.” *Id.*; H.J. of Tex., 64th Leg., R.S. 183 (1975) (address of Gov. Briscoe listing as one of his legislative priorities revising voter registration laws “to ensure all eligible voters the opportunity to participate in our elections” and for the Secretary of State to assist local registrars “in keeping their voter registration rolls accurate and reliable.”), Tab A, App. 3.

The legislative underpinning of this effort was legislation to empower a one-time registration of eligible voters in Texas including providing for “permanent” registration in that once a citizen registered at an address, the registration remained in effect until the voter moved or died or the registrar had reason to believe the voter had moved or died. *See* Act of May 22, 1975, 64th Leg., R.S., ch. 296, §§ 2-6, Tex. Gen. Laws 750-55 at Sec. 43a-47a (hereinafter S.B. 300); USCA5 1348-1349. As an “overlay” to this legislation was “a massive voter outreach program on the part of the State of Texas to see that every person who was eligible to vote was registered to vote.” USCA5 1349. This outreach effort included postage-paid voter registration application cards (so as to not replace the poll tax with any additional costs to voting, a massive public relations campaign, distribution of registration cards in convenience stores, government offices, public facilities, schools, libraries, and banks, and urging other people to register voters via public

service groups like the League of Women Voters and the League of United Latin American Citizens (“LULAC”). USCA5 1351-53.

This legislation also authorized the Secretary of State for the first time to assist local registrars in maintaining accurate voter lists. S.B. 300 at § 7, Sec. 47b. The legislation was not broadly supported, and only passed the House by a vote of 78-64. S.B. 300, Tex. Gen. Laws 750, 764. Likewise the voter registration outreach program was not well received in some counties where those in political power did not want to see change “because they liked the results” of the elections. USCA5 1349-50.

As Governor White testified to the district court, the best example of the ongoing discrimination against minority voters was Waller County, a majority Anglo county that includes the historically black college, Prairie View A&M University. USCA5 1350. There the local voter registrar categorically refused to allow Prairie View students to register to vote even in the face of federal court decisions prompting White as Secretary of State to visit in person with the local officials. *Id.*; see *United States v. State of Texas*, 445 F. Supp. 1245, 1250-51 (S.D. Tex. 1978) (describing then Secretary White’s efforts to require the Waller County tax-assessor to register African American students at Prairie View A&M and comply with federal court decisions); USCA5 1372-73 (White went to Waller

County personally because the local registrar refused to follow the law and violated the students' right to vote).

B. In 1985, Texas finally enacted a modern Election Code, via S.B. 616, designed above all “to encourage voter registration.”

The hodge-podge of legislative, executive, and judicial reforms over the 1960s and 1970s begged a revision of the Election Code. In 1977, the 65th Legislature created a Texas Election Code Revision Commission which drafted revisions of several titles of the code but did not submit a bill for approval by the full Legislature. *See* Sen. Comm. on State Affairs, Bill Analysis, C.S.S.B. 616, 69th Leg., R.S. (1985) at 1 (hereinafter C.S.S.B. 616 Bill Analysis), Tab B, App. 5. Following the next Session, Lieutenant Governor William P. Hobby, Jr. acting as chairman of the Texas Legislative Council appointed a study committee of legislators and an advisory committee of citizens to develop a complete revision of the code working as part of the Legislative Council's statutory revision program.³ *Id.* In 1981, bills were introduced completely revising and codifying Texas election laws, but they failed get out of either originating house's committees. *See id.*; Tex. S.B. 610, 67th Leg., R.S. (1981); Tex. H.B. 1008, 67th Leg., R.S. (1981). No bill was introduced in 1983. C.S.S.B. 616 Bill Analysis at 1. However, Lieutenant Governor Hobby re-appointed the study and advisory committees. *Id.*;

³ The Legislative Council functions as the statutory drafting law firm of the Texas Legislature and has undertaken a multi-decade codification of Texas statutes.

Report of the Election Code Study Committee, Vol. 1, Introduction and Election Code Bill at i (Feb. 1985), Tab C, App. 12.

Along with the study committee, the House Committee on Elections included voter registration on its interim charge for the 68th Legislature.⁴ *See* House Comm. on Elections, Interim Report, 68th Leg., R.S. (Oct. 1, 1984), Tab D, App. 22-26. The Interim Report praised the revision committee's proposals to eliminate ambiguity in the law governing VDRs by simplifying the regulatory system and to clarify the duty of the Secretary of State to encourage voter registration. *Id.* at 25, App. 26.

In February 1985, as the 69th Legislative Session was getting underway, the Election Code Study Committee, chaired by Senator Chet Edwards, submitted its report. Remarkably, after years of fruitless negotiations toward a new Elections Code, the Committee's report was a bipartisan effort with unanimous support for the final draft code. Report of the Election Code Study Committee, Ltr. from Sen. Chet Edwards, Feb. 22, 1985, Tab C, App. 9; House Study Group, Bill Analysis, S.B. 616, 69th Leg., R.S. (5/8/85), Tab E, App. 30-31. The Committee's Report served as the introduced version of S.B. 616. For the provisions governing VDRs, the Report kept existing law in place, but added some provisions to clarify the

⁴ At the end of every legislative session, the Texas Lieutenant Governor and Speaker of the House each assign their respective committees with interim charges of topics to study then prepare draft legislation on those topics in preparation for the next legislative session. Each committee then releases an Interim Study Report of its findings leading up to the next session.

powers of VDRs and to ensure that citizens' voter registration applications were effectively processed. *See* Report, App. B, Ch. 13, Tab C, App. 16-20. The VDR subchapter begins with the language “*To encourage voter registration*, the registrar shall appoint as deputy registrars persons who volunteer to serve.” *See* Tex. S.B. 616, 69th Leg., R.S., (1985) (engrossed) § 13.031(a) (emphasis added).⁵ That language of the legislative intent and goal remained untouched throughout the legislative process and remains in Texas law today. *See* Act of May 9, 1985, 69th Leg., R.S., ch. 211, § 1 at Sec. 13.031, Tex. Gen. Laws 802, 816 (hereinafter S.B. 616), Tab F, App. 38; TEX. ELEC. CODE § 13.031(a).

Other provisions in the new VDR statute were aimed at ensuring voters who wanted to be registered in fact got registered to vote. VDRs are required to check applications for completeness, issue a receipt to the voter, and deliver the application to the registrar within five days. *See* S.B. 616, at §§ 13.039, 13.040, 13.042, Tab F, App. 39. These tighter regulations of VDRs were not intended to make registering voters more difficult, but were instead intended to “ensure that those who register to vote will be added to the rolls in a timely fashion.” House Study Group, Bill Analysis, S.B. 616, 69th Leg., R.S. (5/8/85) at App. 31.

⁵ The entire legislative history of S.B. 616 may be accessed at <http://www.lrl.state.tx.us/legis/billsearch/lrlhome.cfm> by searching the 69th R.S. and S.B. 616.

The receipts to voters have particular importance as they enabled a voter to prove timely submission of an application to register. For many years, VDRs used registration application books that produce a carbon copy of each application. *See* TEX. ELEC. CODE § 13.040 (providing for duplicate receipts). This carbon copy allowed VDRs and the voter registration drives they may have participated in to ensure that the local registrar in fact registered the voters whose applications were submitted. This allowed these citizen-registrars to ensure that the local registrars were not disenfranchising voters whether through simple errors or through invidious discrimination.

Along these lines, S.B. 616 enacted a new provision that the date a citizen submitted a voter application to a VDR was deemed to be the date of submission to the local county registrar for the purpose of determining the effective date of registration. S.B. 616, at § 13.041, Tab E, App. 39. This distinction becomes important in a close race where voter registration drives were working up to the 30-day deadline for voter registration. For example, voters who submitted their application to a VDR 31 days before the election when the local registrar did not actually receive, process, and accept the application until less than 30 days before the election would still have their vote count in an election. In this regard, the VDR still acts as an agent of the state, but the local registrar still holds the power to accept a registration application.

Former Secretary of State Mark White was Governor during the 69th Legislative Session and ultimately signed S.B. 616 into law. Before he did, he had one concern with the legislation and one key question to resolve before he would sign the legislation or decide to veto it. USCA5 1355. He worried that the voter registration bureaucracy built into the Election Code would have the unintended effect of giving authority to local officials that could be used to stop others from registering and voting as he had seen happen when he was Secretary of State in places like Waller County. USCA5 1355. So he asked his staff whether, for example, a preacher could pass out applications to his congregation, have his congregants fill them out, then the preacher could drop the postage-paid applications in the mailbox. USCA5 1355-57. His staff answered him that a preacher could freely do so under the new law. USCA5 1356. So he signed the bill into law once he was satisfied that a voter registration application could be dropped in the mailbox by any citizen helping others to register. *Id.*; USCA5 1368.

Since 1985, but until the last legislative session, the Legislature has amended the VDR statutes only with the intent of expanding voter registration. For many years, the statute prohibited the registrar from refusing to appoint as a deputy registrar residents of that county. *See* S.B. 616, § 13.032(1), Tab F, App. 38; Act of May 31, 1971, 62nd Leg., R.S., ch. 827, § 14, Tex. Gen. Laws 2509, 2523, Sec. 52a(5). Thus, the statute did not prohibit out-of-county citizens from serving as

VDRs but only prohibited discrimination against county residents who were otherwise qualified to serve. In 2009, the Legislature, in a bill with bipartisan sponsors, amended the VDR statute to eliminate even that slight preference for county residents. Act of May 21, 2009, 81st Leg., R.S., ch. 307, § 2, Tex. Gen. Laws 828 (H.B. 488). Instead, anyone who was more than 18 years old, not a convicted felon, or if a convicted felon, off paper, could serve as a VDR.

II. The Legislature created Volunteer Deputy Registrars to encourage voter registration, not to limit the activities of U.S. citizens who wish to increase voter participation or to limit their ability to ensure that local registrars follow the law.

When state or local officials interpret state law and regulations to create artificial barriers to voting, they create nothing more than a modern version of the poll tax. The 1985 Election Code sought to encourage full participation in voter registration and voting with an eye toward curbing malicious behavior not by voters or voter registration drives, but by local registrars who sought to limit voter participation of disfavored groups. Thus, the Code's regulation of VDRs and the voter rolls sought to ensure that once a citizen submitted a voter registration application he or she would be promptly registered if eligible.

White's experience as Secretary of State, Attorney General, then Governor informed his decision to sign S.B. 616 into law as it showed him where the faults in the Texas voter registration and election system truly lie. The intent of the voter registration system was to "open the doors as wide as possible to every single,

eligible qualified voter . . . and not exclude anybody under any circumstance.” USCA5 1361. In White’s experience, individual voter fraud was not the problem. *Id.* (“We found no evidence of that.”). Rather, the elections administrators, such as local registrars, are the ones most likely to violate or abuse the law. *Id.* Interpreting the statutes in a way that puts VDRs in a dilemma about, for example, whether they should turn in a card late or incomplete is contrary to the intent of the law as it sets VDRs up for selective prosecution and creates fear and intimidation in their community. USCA5 1360. This likewise is contrary to the intent of the Election Code.

The intent of the VDR provisions was not to limit registration to registration through VDRs. Rather, it was to make VDRs “just one avenue of many avenues to get everybody registered to vote.” USCA5 1363. Those enacting the Election Code did not want to prevent the League of Women Voters, LULAC, or churches from being active in voter registration. USCA5 1364. “Everybody. We encouraged everybody to get registered.” *Id.* The legislation was set up to do so by having “multiple ways in which you could get registered . . . to make certain it wasn’t just one narrow little line that you had to get into in order to [] exercise your right to vote.” USCA5 1380. Indeed, “this whole system is designed to do one thing: Make sure that every eligible citizen in this state is going to be able to vote

on election day without difficulty, without interference from anybody.” USCA5 1381.

What the Election Code was not intended to do was to create “tripwires” to prevent the registration of voters and those voters exercising their right to vote. As White testified, to interpret the Code in that way would be to “employ[] the same old games they used to play in East Texas” when they would make sure the pen for marking the ballot was tied to string that would not reach the ballot for disfavored voters. USCA5 1383. The Secretary’s interpretation of the overall voter registration scheme coupled with the 2011 amendments to the Code creates such trip wires. The creeping administrative interpretation of provisions that were directed at local registrars and ensure that voters who filled out an application via a VDR were actually got registered to vote has created a scheme rife with tripwires and opened the door to selective prosecution of those helping historically disenfranchised communities to register and vote.

The voter registration scheme as constructed in 1985 implemented quality control on VDRs in some regards because they act with the imprimatur of the state itself. Thus, they must carry identification and ensure applications they receive are submitted to the registrar. *See* TEX. ELEC. CODE §§ 13.033(d), 13.042, Tab F, App. 38, 39. The value a citizen receives from registering through a VDR is the immediate effective date of the registration. TEX. ELEC. CODE § 13.041, Tab F,

App. 39. But this scheme does not preclude citizens participating in voter registration drives without submitting themselves to the regulatory scheme by becoming a VDR. In other words, those voter registration activities that are not expressly prohibited by the Election Code are permitted both as a matter of legislative intent and First Amendment rights of free speech and association. Citizen engagement is to be encouraged, not discouraged by threats of prosecution and tripwires created by a complicated interpretation of the Election Code.

Finally, much of the regulation of voter registration in the Election Code was directed not at VDRs but at local registrars to ensure they did not unlawfully exclude citizens who wished to register to vote and to ensure that citizens registering voters could hold local registrars accountable. Many of the statutes require the local registrar to maintain records of rejected voter registration and VDR applications and ensure due process to voters — all of which enable citizens to hold local registrars accountable for their actions and inactions. *See* TEX. ELEC. CODE §§ 13.034-13.036 (VDR appointment files), Tab F, App. 38-39; §§ 13.071-13.080 (registrar action on voter registration applications), Tab F, App. 40-41; §§ 13.101-13.103 (voter application files), Tab F, App. 42; §§ 15.051-15.054 (voter certificate files); ch. 16 (procedures for canceling registration); ch. 17 (judicial review of registration cancelation). Prominent among these provisions in terms of usefulness is the receipt requirement described above. With the duplicate

applications and receipts, both the voters and those conducting voter registration drives can ensure applications are processed and eligible voters registered in a timely fashion.

The Secretary claims that the County Appointment Rule, the Personal Delivery Requirement, and the Photocopying Prohibition have been in effect since 1985. Apts' Br. at 7, 24, 49. That is not entirely true and over simplifies the barriers the current law and the Secretary's web of interpretations thereof have erected against effective and far-ranging voter registration drives. To say that photocopying a voter application was prohibited in 1985 when the statute provided for duplicate applications is untrue and beyond any stretch of logic. In truth, record keeping by voting registration drives was and is integral to holding local registrars accountable to the law and the rights of voters.

CONCLUSION

For the foregoing reasons, amicus curiae encourages this Court to affirm the district court's order and safeguard the intent of the Texas Election Code to encourage voter registration and participation.

Respectfully submitted,

/s/ Susan Hays

SUSAN HAYS

LAW OFFICE OF SUSAN HAYS, P.C.

1409 South Lamar, Ste. 357

Dallas, Texas 75215

(214) 557-4819

(214) 432-8273 (fax)

hayslaw@me.com

*Counsel for Amicus Curiae Former
Governor Mark White, Former
Lieutenant Governor William P.
Hobby, and Members of the 69th
Texas Legislature*

CERTIFICATE OF SERVICE

I, Susan Hays, certify that today, November 23, 2012, a copy of this Brief of Amicus Curiae was served upon Jonathan Mitchell and Arthur D’Andrea, counsel for the Hope Andrade, Texas Secretary of State, via ECF.

/s/ Susan Hays
Susan Hays

CERTIFICATE OF COMPLIANCE

I certify that: **(check appropriate option(s))**

- ☒ 1. Pursuant to Fed. R. App. P. 32 (a)(7)(C) and Fifth Circuit Rule 32, the attached opening brief:
- ☒ has been prepared in a proportionately spaced typeface of 14 points or more and contains 4,355 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii)). The document was created in MS Word for Mac 2008.

Dated: November 23, 2012

/s/ Susan Hays
SUSAN HAYS
LAW OFFICE OF SUSAN HAYS, P.C.
1409 South Lamar, Ste. 357
Dallas, Texas 75215
(214) 557-4819
(214) 432-8273 (fax)

Case No. 12-40914

IN THE
**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**VOTING FOR AMERICA, INC., PROJECT VOTE, INC.,
BRAD RICHEY, and PENELOPE MCFADDEN,**
Plaintiffs – Appellees,

v.

HOPE ANDRADE, Texas Secretary of State, in her official capacity,
Defendant – Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS, GALVESTON DIVISION
CASE NO. 3:12-CV-44

**APPENDIX TO BRIEF OF FORMER GOVERNOR MARK
WHITE, FORMER LIEUTENANT GOVERNOR WILLIAM
P. HOBBY, JR., AND MEMBERS OF THE 69TH TEXAS
LEGISLATURE AS AMICUS CURIAE IN SUPPORT OF
APPELLEE**

SUSAN HAYS
LAW OFFICE OF SUSAN HAYS, P.C.
1409 South Lamar, Ste. 357
Dallas, Texas 75215
(214) 557-4819
(214) 432-8273 (fax)
Counsel for Amicus Curiae

APPENDIX

Address of Governor Dolph Briscoe to the 64th Legislature, H.J. of Tex., 64th Leg., R.S. 181, 183 (1975) (excerpts)	Tab A, App. 2-3
Sen. Comm. On State Affairs, Bill Analysis, C.S.S.B. 616, 69th Leg., R.S. (1985) (excerpts).....	Tab B, App. 5-6
Report of the Election Code Study Committee, Vol. 1, Introduction and Election Code Bill; App. B (Feb. 1985) (excerpts)	Tab C, App. 8-20
House Comm. on Elections, Interim Report, 68th Leg., R.S. (Oct. 1, 1984) (excerpts).....	Tab D, App. 22-26
House Study Group, Bill Analysis, S.B. 616, 69th Leg., R.S. (5/8/85)	Tab E, App. 28-30
Act of May 9, 1985, 69th Leg., R.S., ch. 211, § 1, Tex. Gen. Laws 802 (1985) (excerpts)	Tab F, App. 34-43

TAB A

January 22, 1975

HOUSE JOURNAL

181

Lieutenant Governor Hobby called the Senate to order.

A quorum of the Senate was announced present.

The Honorable Bill Clayton, Speaker of the House, called the House of Representatives to order.

Speaker Clayton directed all members present to register.

A quorum of the House was announced present.

Speaker Clayton stated that the two Houses were in joint session for the purpose of hearing an address by the Honorable Dolph Briscoe, Governor of Texas.

Speaker Clayton then presented Governor Briscoe to the joint session.

Governor Briscoe addressed the joint session, speaking as follows:

TO THE MEMBERS OF THE 64th LEGISLATURE, REGULAR SESSION:

I appreciate the invitation to appear before you today to deliver my second state of the state address in person. I welcome each of you as partners in the solemn exercise of democracy and self-government. To those of you who served in the 63rd Legislature, I welcome the opportunity to renew our friendship and strengthen our mutual bonds of service. To those of you who are new to the capitol, I look forward to getting to know each of you and working with you for the common good. I will not take up your time today with either rhetoric or philosophy. Our agenda is long and pressing and our time is limited. I am convinced that straight talk is more important than high-sounding words.

My philosophy can be expressed very briefly, and I think most of you know what it is. I agree with the late John Nance Garner that there are only two things to government: to safeguard the lives and the property of our people; and to ensure that each of us has a chance to work out his destiny according to his talents.

I further believe that the closer the level of decision making is to the people, the more capable government is of responding to the needs and wishes of the people. Within the framework of that philosophy, I want to present to you my legislative proposals. Yesterday, in my inaugural address, I spoke of ten fundamental rights of Texans which I believe must be protected and perfected by the legislature. Today, I will deal with those rights in somewhat more detail.

ECONOMICAL, EFFICIENT, AND RESPONSIVE GOVERNMENT

One right each Texan has is the right to economical, efficient, and responsive state government which spends his hard-earned tax dollars wisely and frugally. To put it in plain terms, we must waste absolutely nothing. We must counter spiraling inflation with more productivity from available resources--better utilization of personnel, more productive use of office space, increased efficiency. We must establish our priorities and stick with them. We must be acutely aware that our surplus can evaporate just as rapidly as it has developed. And I think I should tell you this at the outset: I will not, as Governor, approve an appropriations bill that requires new or increased taxes. The executive branch will do its share to hold the line.

Let me cite just two examples of what can be accomplished to better utilize our resources without diminishing effective government services. Recently the State Board of Insurance conducted a management study of its entire operation. The board has already saved more than \$350,000 by eliminating unnecessary jobs, combining related

OPEN AND HONEST GOVERNMENT

A second right of each Texan is the right to open and honest government. Such a government must be truly responsive to the needs of its citizens. It must be a government which listens to its people, acknowledges their problems, and faithfully responds to their concerns. You and I recognize that 1975 state government is a far cry---in both size and responsibility---from our state government of just 10 years ago. Today, Texas state government encompasses some 265 agencies, departments, boards, and commissions whose functions touch nearly every aspect of our lives. New federal programs are constantly adding to the state's responsibilities.

This growth in government activity has created bewilderment for many citizens who need our assistance, but do not know where to turn. The open door to government has become barred by increased entwinement of red tape and expanded bureaucracies. To help eliminate some of this confusion and make government more available and more open, I have established within the Governor's office a special telephone assistance service--TEXHELP--which is providing toll-free telephone access to anyone, in any part of the state, who needs assistance or information on matters involving state government.

In those instances where a person requests assistance, my staff will investigate the matter with the involved state agency and promptly report back to the caller. I want to assure you that TEXHELP will work closely with each of you, assisting you with problems of your constituents and keeping you informed of problems that are developing in your districts.

Effective communication is another key to open government, and to facilitate public access to information about the administrative operations of state government, I recommend that the legislature authorize publication of an official Texas State Register. The twice weekly publication of the Texas Register would list for every interested citizen all proposed state regulations, notices of public meetings and hearings, and the rulings and decisions of state government. This Texas Register would be maintained by the Secretary of State and would be available on a cost basis to every concerned citizen.

FAIR ELECTIONS

A third right of each Texan is the right to fair elections and the opportunity for full participation in those elections. The keystone to our political system is the free ballot. Over the past decade, federal legislation, state and federal litigation, and technological advances have rendered large segments of our election laws obsolete. To assure Texans of honest, efficient, and economical elections, several changes should be made in our election laws.

We must revise our voter registration laws to ensure all eligible voters the opportunity to participate in our elections, but at the same time make certain that our registration rolls are strictly limited to eligible voters. Local registrars must continue to have the primary responsibility for administering our voter registration system. However, they need assistance in performing these duties, and I am directing the Secretary of State to draft legislation to assist local officials in keeping their voter registration rolls accurate and reliable. Just as technology has caused some problems, we can look to technology to help solve these problems. The Secretary of State's office can and should serve as a clearinghouse to aid local officials in updating their rolls.

I also urge the passage of appropriate legislation to enable the Secretary of State to ensure that elections in Texas, both primary and general, are properly financed. I recommend legislation that requires all political contributions and expenditures over \$10 to be in the form of a personal check or cashier's check. Finally, I believe that reasonable limitations should be imposed on political spending in statewide and district races, based on population. These limitations, however, should not be set so low that

TAB B

C.S. S.B. 616 by Edwards

Relating to the adoption of an election code; making conforming amendments and repeals; providing penalties.

Background Information:

The Texas Election Code was last codified in 1951. Recognizing a need for a complete revision of the code, the 65th Legislature in 1977 created the Texas Election Code Revision Commission, which completed several titles of a revised code but did not submit a bill proposing a complete revision. Following the 66th legislative session, Lieutenant Governor Hobby appointed a study committee and an advisory committee to propose a complete revision of the election code under the Legislative Council's statutory revision program. A bill proposing a complete revision was introduced during the 67th Legislature in 1981. That bill passed the Senate, but it was not reported from House committee. A bill proposing a complete revision of the election code was not introduced until the 1983 session.

Following the 68th Legislature in 1983, Lieutenant Governor Hobby appointed another study committee and advisory committee to propose a complete recodification of the election code under the Legislative Council's statutory revision program. The recodification has been introduced as S.B. 616 and H.B. 1139.

Problem(s) that the Bill Addresses:

Since the election code has not be recodified since 1951, but has instead been amended heavily and substantially affected by court decisions and administrative rulings since then, the code is extremely complex, confusing, and difficult to use. The code also contains certain omissions and inadequacies which could stand correction. A partial list of those correction is set out below.

How this Bill will Solve the Problem(s):

The proposed code incorporates incorporates the changes necessary to eliminate conflicts and inconsistencies, fill in gaps, clarify vague and ambiguous provisions, delete or replace invalid or obsolete provisions, standardize variant procedures, replace unrealistic or unworkable procedures, and improve the elective processes and procedures.

The major substantive changes are as follows:

- (1) The proposed code eliminates the ambiguity regarding current law on volunteer deputy registrars by providing a regulatory system for volunteer deputies that clarifies the roles of the voter registrar and the deputies within the overall registration system. The code codifies various rules of the secretary of state relating to volunteer deputies and provides criminal penalties for the failure of volunteer deputies to timely deliver complete registration applications to the voter registrar. (Subchapter B, Chapter 13)
- (2) The proposed code requires, rather than authorizes, training programs to be conducted for election officers in primary and county elections and requires the election judges in county elections to complete a training program. (Secs. 32.113, 32.114)
- (3) The propose code requires voting booths to be used at all polling places rather than at each polling place in a city with a population of 10,000 or more. (Sec. 51.032)
- (4) The proposed code implements the requirements of the federal Overseas Citizens Voting Rights Act of 1975 which is currently being implemented by directive of the secretary of state. (Chapter 14)
- (5) The proposed code provides a specific procedure by which candidates may be declared ineligible by certain administrative authorities if information on an application for a place on the ballot or information contained in another public record indicates ineligibility. (Sec. 145.003)

(6) The proposed code eliminates the primary ballot pledge of support for the party's nominees and substitutes a statement that the voter is a party member and understands that he is ineligible to vote or participate in another party's primary or convention during the voting year. (Sec. 172.086)

(7) The proposed code provides that the biennial state party convention currently held in September is to be held in June so that in presidential election years it can be held in conjunction with the state convention for selected delegates to the national nominating convention. (Sec. 174.092)

(8) The proposed code provides a standard procedure for obtaining and conducting a recount that is applicable to all elections regardless of the method of voting. Grounds must exist before any recount may be obtained. Unless counting errors are certified by the secretary of state, a recount in an election for which there is no canvass at the state level must include each election precinct in the election. In an election for which there is a final canvass at the state level, a recount of votes cast in a voting system may include all the voting system precincts in each county recounted. (Title 13)

*(9) The proposed code prohibits specific-purpose committees from converting political contributions to the personal use of a candidate, officeholder, or former candidate or officeholder. The code provides that a candidate or officeholder who makes expenditures from his personal funds for campaign or officeholder purposes may reimburse his personal funds from political contributions in the amount of those expenditures. (Sec. 253.035)

*(10) The proposed code prohibits a general-purpose committee from making political contributions or expenditures unless the committee has had its campaign treasurer appointment on file for 60 days and has accepted political contributions from at least 10 persons. The code also prohibits a general-purpose committee from making a contribution to another general-purpose committee unless the other committee is listed in the campaign treasurer appointment of the contributor committee. (Sec. 253.037)

*(11) The proposed code requires the total amount of unexpended political contributions accepted on or after January 1, 1986, as of the end of a reporting period, to be reported. (Sec. 254.031)

*(12) The proposed code standardizes reporting requirements regarding political funds by requiring semiannual reports covering activity occurring in an election year, resulting in a semiannual reporting schedule for election and nonelection years. The code eliminates the reports required to be filed not later than the 30th day after an election. (Secs. 254.063, 254.064)

*(13) The proposed code provides that an officeholder who is not required to file with the secretary of state and who has not accepted political contributions that exceed \$500 or made political expenditures that exceed \$500 by the end of a reporting period is not required to file a report covering that period. (Sec. 254.095)

* This provision is contained in a separate bill on Title 15--Regulating Political Funds and Campaigns.

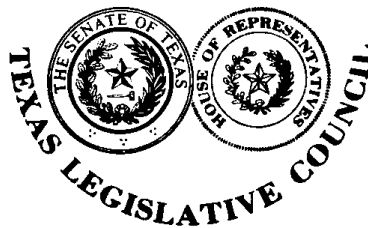
TAB C

REPORT
OF THE
ELECTION CODE STUDY COMMITTEE

ELECTION CODE

Volume I

Introduction and Election Code Bill



To be submitted to the 69th Legislature
as part of the
Texas Legislative Council's
Statutory Revision Program

Austin, Texas
February, 1985



CHET EDWARDS
STATE SENATOR
DISTRICT 9

**The Senate of
The State of Texas
Austin 78711**

February 22, 1985

Committees:
STATE AFFAIRS
EDUCATION
HEALTH AND HUMAN
RESOURCES
SUBCOMMITTEE ON
HEALTH SERVICES
NOMINATIONS

To Members of the 69th Legislature:

The accompanying report of the Election Code Study Committee was adopted by a unanimous vote of the members of the study and advisory committees present at our final meeting on February 8, 1985. The introduction to the committee report discusses the nature and goals of the Election Code recodification project and lists the members of both committees.

As you know, the Texas Election Code was last codified in 1951 and is badly in need of a complete revision. I believe that the revised Election Code proposed in this committee report is an exemplary document with bipartisan support that deserves full consideration by this Legislature. The report incorporates changes necessary to eliminate conflicts and inconsistencies, clarify vague and ambiguous provisions, fill in gaps, delete or replace invalid provisions, and standardize variant procedures to improve the elective process.

The two recommended bills contained in this committee report will be introduced as separate pieces of legislation. One bill contains the basic recodification provisions of the entire Code, excluding Title 15--Regulating Political Funds and Campaigns. The revision of Title 15 will be introduced as a separate bill.

Questions, comments, or suggestions may be directed to me or to Glen Shuffler, Election Code project director, Texas Legislative Council, 475-2736.

Sincerely,

A handwritten signature in cursive script that reads "Chet".

Chet Edwards
State Senator
Chairman, Election Code Study Committee

CE:kb

85Y1~

/8711, 512/475-3758

REPORT
OF THE
ELECTION CODE STUDY COMMITTEE

ELECTION CODE

To be submitted to the 69th Legislature
as part of the
Texas Legislative Council's
Statutory Revision Program

Austin, Texas
February, 1985

TEXAS LEGISLATIVE COUNCIL
of the
68th LEGISLATURE OF TEXAS
Lieutenant Governor William P. Hobby, Chairman
Speaker Gibson D. (Gib) Lewis, Vice-Chairman

SENATORS

Roy Blake
Bob McFarland
Carl Parker
John Traeger
R. L. (Bob) Vale

REPRESENTATIVES

Bill Blanton
Charles Evans
W. N. (Billy) Hail
James E. (Pete) Laney
Bill Messer
Mike Millsap
Jim D. Rudd
Robert Saunders
Stan Schlueter
Ron Wilson

Robert I. Kelly, Executive Director

P.O. Box 12128, Capitol Station

Austin, Texas 78711

INTRODUCTION

Following the 68th Legislative Session, Lieutenant Governor Bill Hobby, as Chairman of the Texas Legislative Council, appointed the Election Code Study Committee to complete a study of the state's election laws and to propose a complete recodification of the Election Code, incorporating the changes necessary to eliminate conflicts and inconsistencies, fill in gaps, clarify vague and ambiguous provisions, delete or replace invalid or obsolete provisions, standardize variant procedures, replace unrealistic or unworkable procedures, and improve the elective processes and procedures. The study committee is composed of:

Senator Chet Edwards, Chairman;
Senator Ray Farabee;
Senator Ike Harris;
Representative Clint Hackney;
Representative Bill Blanton;
Representative Lee Jackson (represented in part by
Steve Tiemann);
Representative Mike Millsap;
Representative Stan Schlueter;
Secretary of State Myra A. McDaniel;
Bob Slagle, State Chairman, Democratic Party
(represented by Barbara Stanley); and
George Strake, State Chairman, Republican Party
(represented by Judge John Clark).

Former Representative El Franco Lee, former Representative Gerald Hill, and former Secretary of State John Fainter also served on the study committee while holding office.

Lieutenant Governor Hobby also appointed a committee of interested and knowledgeable citizens to advise the Election Code Study Committee. The members of the advisory committee are:

Ray Hutchison, Chairman;

Karen Gladney, Director, Elections Division, Office of
the Secretary of State;
Gaylord Armstrong;
Randall "Buck" Wood;
former Secretary of State Steven Oaks;
former Representative Susan McBee;
former Senator W. E. "Pete" Snelson;
Morris Overstreet;
Ruth Jones;
Barbara Stanley, Democratic Party;
Robert L. Lemens, Office of the Attorney General;
Rhonnie Campbell Mayer, County and District Clerks'
Association of Texas;
Anita Rodeheaver, County Clerk, Harris County;
Carol Autry, Association of Tax Assessors-Collectors;
Wilma Thomas, Association of City Clerks and
Secretaries;
Raul Reza Vasquez, League of United Latin American
Citizens;
the Reverend A. C. Sutton, Texas State Conference of
Branches, NAACP;
Pat Longoria, Mexican-American Legal Defense and
Education Fund;
John Hildreth, Common Cause of Texas;
Andrew Hernandez, Southwest Voter Registration Project;
Rowena Rodgers, League of Women Voters of Texas; and
Hector Garcia, American G.I. Forum.

The legislative council staff updated and revised the
Election Code recodification bill that had been introduced in the
67th Legislature in 1981 as S.B. 610. This preliminary draft of
the proposed Election Code was the starting point for deliberations
by the committees. The study committee and its advisory committee
have met and considered the draft of each title of the proposed

code. As a result of the deliberations, the study committee directed the staff to make revisions, to delete some provisions and add others, and in some cases to present additional alternatives for consideration. The staff thoroughly reviewed all drafts after they were considered by the committees to determine where conforming changes were necessary to achieve consistency in style and substance throughout the proposed code. The staff then prepared this committee report, incorporating the changes adopted by the committee and the staff's conforming changes. This report also includes a comprehensive summary of the differences between the proposed code and current law (Appendix B).

The proposed code is divided into titles, chapters, subchapters, and sections. Sections are numbered decimally, and the number to the left of the decimal point is the same as the chapter number. Gaps in chapter and section numbering are for future expansion.

In reviewing the proposed code, the reader should keep in mind the following:

(1) The Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes) applies to the code except as otherwise provided. That Act sets out certain principles of statutory construction applicable to new codes and also provides some definitions. The Act appears as Appendix D in this report.

(2) The proposed code is written in modern American English. Where possible, the present tense is used; the active rather than the passive voice is preferred; and the singular is used in preference to the plural.

Each section of the proposed code is followed by a citation that identifies the provision in current law from which the proposed section is derived.

(1) "New" alone indicates that there is no provision in current law similar enough to the proposed section to be cited as a source.

(2) A statutory reference plus "New" indicates that the proposed section is derived mainly from the cited provision, but that it contains provisions or concepts not found specifically in the cited provision.

The proposed Election Code with conforming amendments is printed in bill form. The revision of current Chapter 14 of the code regulating political funds and campaigns will be introduced as a separate bill with appropriate contingency clauses (Appendix A); the bill adopting the Election Code contains a renumbered but unrevised Chapter 14 that will take effect only if the separate bill revising Chapter 14 does not become law.

Questions, comments, or suggestions may be directed to Senator Chet Edwards, Chairman, Election Code Study Committee, or to Glen Shuffler, Election Code Project Director, Texas Legislative Council, P.O. Box 12128, Capitol Station, Austin, Texas 78711, (512) 475-2736.

1 APPENDIX B

2 SUMMARY OF CHANGES

3 "No substantive change" indicates that the proposed section
4 does not contain a change that alters the meaning, sense, or effect
5 of the provision of current law from which the section is derived.
6 Usually, such a section does not contain any change from the
7 current law other than the obvious change in language, style, or
8 organization inherent in the process of rewriting the law.

9 Each of the other proposed sections has a statement
10 indicating or describing a change from current law that is found in
11 the proposed section. The changes are not distinguished as either
12 substantive or nonsubstantive, and the statements do not summarize
13 the entire proposed section. Only the changes are mentioned.

14 CHAPTER 1

15 Sec. 1.001. This new section provides that the act may be
16 cited as the Election Code.

17 Sec. 1.002. This new section prescribes the general
18 applicability of the code.

19 Sec. 1.003. This new section codifies the applicability of
20 the Code Construction Act to the code.

21 Sec. 1.004. This new section prescribes a general rule for
22 internal references to code units.

23 Sec. 1.005. The revised law clarifies, adds to, and deletes
24 current definitions of terms used in the code.

25 Sec. 1.006. This new section provides a general grace period
26 for performance of an act when the last day for performance is a
27 Saturday, Sunday, or holiday.

28 Sec. 1.007. This new section prescribes general rules
29 relating to the delivery, submission, and filing of documents under
30 the code.

31 Sec. 1.008. This new section prescribes general rules

1 CHAPTER 13

2 SUBCHAPTER A

3 Sec. 13.001. The revised law reflects the change in the
4 eligibility of felons to vote made in Section 11.002.

5 Sec. 13.002. The revised law requires statements on a voter
6 registration application that the applicant is not ineligible
7 because of mental incompetence or a felony conviction. The section
8 provides that the omission of an applicant's middle or maiden name
9 does not affect the validity of an application.

10 Sec. 13.003. The revised law clarifies the authorized
11 functions of an agent for an applicant for voter registration. The
12 section provides that a person is eligible to be an agent if the
13 person has submitted a registration application and is otherwise
14 eligible to vote.

15 Sec. 13.004. No substantive change.

16 Sec. 13.005. No substantive change.

17 Sec. 13.006. The revised law clarifies the conduct that is
18 unlawful in regard to a person purportedly acting as an agent for
19 an applicant for voter registration.

20 Sec. 13.007. No substantive change.

21 SUBCHAPTER B

22 This subchapter provides a regulatory system for volunteer
23 deputy registrars and clarifies the roles of the voter registrar
24 and the volunteers within the overall registration system. The
25 subchapter codifies various rules of the secretary of state
26 relating to volunteer deputy registrars.

27 Sec. 13.031. The revised law provides that volunteer
28 deputies serve for terms expiring December 31 of even-numbered
29 years.

30 Sec. 13.032. No substantive change.

31 Sec. 13.033. This new section prescribes a procedure for
32 appointing a volunteer deputy and for providing identification to

1 the deputy.

2 Sec. 13.034. This new section prescribes a filing system for
3 effective volunteer deputy appointments.

4 Sec. 13.035. This new section prescribes a filing system for
5 terminated volunteer deputy appointments.

6 Sec. 13.036. This new section prescribes procedures for the
7 termination of a volunteer deputy's appointment.

8 Sec. 13.037. No substantive change.

9 Sec. 13.038. This new section prescribes the general powers
10 of volunteer deputy registrars.

11 Sec. 13.039. This new section requires a volunteer deputy to
12 review each registration application for completeness.

13 Sec. 13.040. This new section prescribes a procedure for a
14 volunteer deputy to give a receipt to an applicant for the
15 registration application.

16 Sec. 13.041. This new section provides that the date of
17 submission of a registration application to a volunteer deputy is
18 considered the date of submission to the voter registrar for
19 determining the effective date of registration.

20 Sec. 13.042. This new section prescribes deadlines for the
21 delivery of registration applications by a volunteer deputy to the
22 voter registrar.

23 Sec. 13.043. This new section prescribes a criminal penalty
24 for the failure of a volunteer deputy to deliver a registration
25 application to the voter registrar by the deadline.

26 Sec. 13.044. This new section prescribes an offense for
27 purporting to act as a volunteer deputy registrar when no effective
28 appointment exists.

29 Sec. 13.045. No substantive change.

30 Sec. 13.046. The revised law adds to and clarifies the
31 duties of high school deputy registrars.

1 SUBCHAPTER C

2 Sec. 13.071. The revised law clarifies the fact that the
3 registrar must review each registration application and requires
4 the registrar to do so within seven days after the application is
5 submitted.

6 Sec. 13.072. The revised law requires the registrar to
7 approve or reject an application after reviewing it.

8 Sec. 13.073. This new section prescribes a procedure for
9 notifying an applicant that the application has been rejected.

10 Sec. 13.074. The revised law standardizes the procedures for
11 challenging an applicant for registration with the procedures for
12 challenging a registration and a cancellation of a registration.
13 The section requires the registrar to challenge an applicant if
14 after determining that the application is in proper form and
15 indicates eligibility for registration the registrar has reason to
16 believe the applicant is ineligible or the application was
17 submitted in an unauthorized manner. The section prohibits
18 challenging an applicant later than the second day after the
19 application is determined to be in proper form and indicate
20 eligibility. The section eliminates the authorization in current
21 law for the direct challenge of an applicant by a registered voter.

22 Sec. 13.075. This new section provides for notice to be
23 given to a challenged applicant of the grounds for the challenge
24 and the right to a hearing and appeal.

25 Sec. 13.076. This new section prescribes a procedure for a
26 challenged applicant to request a hearing on the challenge.

27 Sec. 13.077. The revised law prescribes a deadline for
28 conducting a hearing on the challenge of an applicant and the
29 method by which the challenged applicant may offer evidence or
30 argument.

31 Sec. 13.078. This new section provides for notice to be
32 given to a challenged applicant of the date, hour, and place set

1 for a hearing on the challenge.

2 Sec. 13.079. The revised law requires the registrar to issue
3 a written decision after determining a challenge of an applicant
4 for registration and to deliver a copy of the decision to the
5 applicant.

6 Sec. 13.080. No substantive change.

7 SUBCHAPTER D

8 Sec. 13.101. No substantive change.

9 Sec. 13.102. No substantive change.

10 Sec. 13.103. No substantive change.

11 SUBCHAPTER E

12 Sec. 13.121. The revised law clarifies the fact that the
13 secretary of state has application forms for voter registration by
14 mail printed and that the secretary furnishes the forms in
15 reasonable quantities to the voter registrars. The section
16 eliminates the duty in current law for the secretary to make the
17 application by mail forms available to various entities in
18 reasonable quantities. The section requires the secretary to
19 design the form to enhance its legibility.

20 Sec. 13.122. No substantive change.

21 SUBCHAPTER F

22 Sec. 13.141. No substantive change.

23 Sec. 13.142. No substantive change.

24 Sec. 13.143. The revised law codifies a past interpretation
25 by the secretary of state that a registration is effective for
26 purposes of voting absentee if it will be effective on election
27 day.

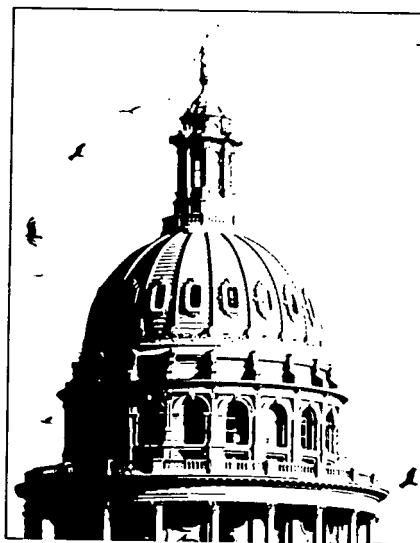
28 Sec. 13.144. No substantive change.

29 Sec. 13.145. No substantive change.

TAB D

DEC 84

Texas House of Representatives



Interim Report to the 69th Texas Legislature

Committee on Elections

TEXAS HOUSE OF REPRESENTATIVES
COMMITTEE ON ELECTIONS

SUBCOMMITTEE ON THE
VOTING RIGHTS ACT AND VOTER REGISTRATION

Representative David Patronella, Chairman

Members:
Representative Jim Horn
Representative Russ Tidwell

THE VOTING RIGHTS ACT AND VOTER REGISTRATION
COMMITTEE ACTION

The Subcommittee on the Voting Rights Act and Voter Registration met on April 11, 1984. The Chair, David Patronella, explained that the focus of the Subcommittee would be to examine the effect of the Voting Rights Act on elections in Texas and to discuss how to increase voter participation.

Mr. William Oliver testified on behalf of the Voting Rights Act. He discussed the different sections of the Act, specifically Sections 2 and 5. Section 2 prohibits laws and practices anywhere in the country that discriminate against minority voters. It allows citizens to challenge these laws and practices in federal court. Section 5 prohibits state or local governing bodies from changing any law, regulation, or practice that affects the right to vote without first submitting the change to the Justice Department or the federal courts for approval. This requirement gives citizens the chance to prevent discriminatory practices.

The Justice Department requires that Section 5 be complied with before Section 2 can be considered. Mr. Oliver feels that these sections need to be independent of each other. He also noted that the Act has been exceptionally good for the Beaumont Independent School District with a record number of minorities voting and the election of three blacks to the school board.

Mr. Alfred Calloway, Director of the Board of Operation Voter Education and Registration testified. He indicated

that there is a measurable increase in minority participation, especially in candidates. He stated that although registration is very easy, mobility affects registration and that people are often "lost" due to purging of voter registration lists.

Mr. Jack Grace, Assistant Chief Clerk, Harris County Tax Office, testified and said that Texas has one of the better registration processes in the country. He said that their office is striving for a "pure roll" which would be consistent with all names actually used. Duplicate names appear on registration lists in some cases because social security numbers are not used to cross-check, and also because the Tax Office is not always notified when a voter is deceased.

Rep. Debra Danburg testified and made the following suggestions:

1. Have universal voter registration based on names from drivers' licenses or DPS identification cards and have computer terminals in each polling place to verify and track voters. She also wants to insure that precinct judges are aware of the change in the law which allows an individual to vote without a registration card but with a sworn affidavit.
2. Allow people to use voting guides; this would be especially helpful in elections with numerous candidates on the ballot.

RECOMMENDATIONS

1. Expand jury duty lists to include names from drivers' licenses or DPS identification cards and property owners so that jury duty is not limited to voter registration lists.
2. Allow voters to use voting guides, such as sample ballots, in polling places.
3. Submit a resolution to Congress requesting that the waiting period required for Justice Department pre-clearance of all election related legislation be shortened. Currently the average waiting period is 60 days, and often as long as 120-160 days.

4. The Committee discussed but did not reach an agreement regarding whether or not party registration should be required.

In addition, the following is a summary of the changes in the Texas Election Code which would improve voter registration methods as proposed by the Texas Election Code Revision Committee.

Title 2--Voter Qualifications and Registration

1) Subchapter B of Chapter 13 eliminates much ambiguity regarding the current law on volunteer deputy registrars by providing a simple regulatory system for volunteer deputies that clarifies the roles of the voter registrar and the deputies within the overall registration system; the subchapter codifies various rules of the Secretary of State relating to volunteer deputy registrars.

2) Sec. 13.121 clarifies the duty of the Secretary of State to furnish application forms for voter registration by mail to the voter registrars and eliminates the specific duty of the Secretary to furnish the forms to various groups. The committee discussed the feasibility of enlarging the postage-paid registration application form currently prescribed by the Secretary of State. The Secretary of State's office agreed to study and report on the feasibility of changing the format for the application form to allow larger print to be used on the form.

3) Sec. 14.052--The committee discussed the feasibility of extending the end of the period of voting by persons on the list of returned registration certificates from August 15 to December 1 on even-numbered years. Those persons avoid cancellation of their registrations by voting during this period (currently from March 1-August 15). Extending this period would include those voting in the November general election.

TAB E

HOUSE
STUDY

SB 616

GROUP bill analysis

5/8/85

Edwards, Harris, Mauzy
(Hackney, Blanton, et al.)

SUBJECT: Election Code recodification and revision

COMMITTEE: Elections: favorable, with amendments

VOTE: 9 ayes--Hackney, Staniswalis, S. Thompson, Carriker,
Carter, Horn, Laney, Robnett, Russell

0 nays

SENATE VOTE: On second, third readings: passed by voice vote
(For vote on amendments, see NOTES)

WITNESSES: For--Myra McDaniel, Secretary of State; Karen
Gladney, elections division, Secretary of State's
office; John Clark, Republican Party of Texas; Barbara
Stanley, chair, Harris County Democratic Party; Anita
Rodeheaver, county clerk, Harris County; Gerald Winn,
Tax Assessor- Collectors Association of Texas; Rhonnie
Mayer, County Clerks Association; Robert Sloan,
Association of City Clerks and Secretaries of Texas;
Conny McCormack, elections administrator, Dallas
County; John Hildreth, Common Cause of Texas; Rowena
Rodgers, League of Women Voters of Texas; Raul Reza
Vasquez, state chair, League of United Latin American
Citizens; Pat Longoria, Mexican American Legal Defense
and Educational Fund

Against--None

On--Glen Shuffler, Texas Legislative Council

DIGEST: SB 616 would recodify the Texas Election Code,
reorganizing the existing provisions and adding new
provisions. All of the chapters in the current version
of the Code would be repealed except for Chapter 14,
regulating political funds and disclosure. Either
Chapter 14 would be added to the new Code by a separate
bill that would make several changes in that chapter or
else it would be added unchanged to the new Code.

Any law enacted by the 69th Legislature that amends the
current Election Code would prevail in case of conflict
with SB 616 and would be given effect as part of the
new Code. In cases where SB 616 and another act made
the same substantive change, the language of SB 616
would prevail.

SB 616
page 2

DIGEST:
(continued)

If the U. S. Justice Department objected to any provision of SB 616 under the federal Voting Rights Act, it would not affect the validity of the remainder of the Code. The Secretary of State would identify the provision of the current Code corresponding to the objectionable provision, and that provision would not be considered repealed by the new Code. (Under sec. 5 of the Voting Rights Act, the Justice Department can only object to, and thereby invalidate, changes in state law affecting voting rights, not existing law).

Changes and New Provisions in Senate Version

Under SB 616, the waiting period for restoration of voting rights to convicted felons would be reduced from five years to two years following certification of discharge from parole or mandatory supervision or completion of probation.

Rather than require major parties to hold state conventions in September during every even-numbered year and also in June during presidential election years, SB 616 would require state conventions to be held in June during every even-numbered year.

Voters in a party primary would no longer pledge to support the nominee of the party. Instead, primary voters would acknowledge their ineligibility to participate in another party's primary or convention during the same voting year.

SB 616 would clarify that voting precincts may be consolidated for party primary elections.

Under current law, there are different procedures for obtaining a recount depending on whether paper ballots or voting machines were used. SB 616 would establish a single new procedure for requesting and conducting a recount.

Voting booths are currently required only in towns or cities of 10,000 or more. SB 616 would require voting booths at every polling place. The Secretary of State would approve the design of voting booths and ballot boxes.

Training programs for election officials would be required for those conducting certain elections.

SB 616
page 3

DIGEST:
(continued)

New provisions would specify the duties of volunteer deputy voter registrars. Volunteer deputy registrars would have to be certified by voter registrars and issue receipts to voters whom they register. It would be a class-C misdemeanor (maximum fine of \$200) for a person to act as a volunteer deputy registrar without being certified or to fail to deliver a registration application to the registrar. Intentional failure to deliver an application would be a class-A misdemeanor (maximum fine of \$2,000 and maximum jail term of one year).

The effective date of the new Election Code would be Jan. 1, 1986.

House Committee Amendments

One amendment would allow the chair, vice-chair, and member of state-party executive committees to be elected to four-year terms at the party convention held in gubernatorial election years. The second amendment would provide that if a candidate withdrew from the race due to incapacitating illness, and the other parties that held a primary had no candidate for the office, the executive committees of all parties could nominate replacement candidates.

The third committee amendment would clarify that county or precinct party chairs need only receive a majority of votes cast in their race, not a majority of all votes cast in the primary election, and would require that a participant in a party's precinct convention be affiliated with the party. The fourth amendment would require a majority of the county party's executive committee to participate in filling a committee vacancy, change the primary filing deadline from 5 p.m. to 6 p.m., and require election of a secretary at precinct and county and district party conventions. The fifth amendment would permit the Secretary of State to prescribe alternative procedures for issuance of a receipt to persons registered by a volunteer deputy registrar. The amendment would also permit cancellation of voter registration if the registrar had personal knowledge of the death of a registered voter or received notice from a relative. The amendment would also provide that a county could not contract for computer services for voter-registration lists without prior approval of the Secretary of State.

SUPPORTERS
SAY:

SB 616 is the product of years of effort to

SB 616
page 4

SUPPORTERS reach bipartisan agreement on a streamlined,
SAY: reorganized Election Code. The current Code has not
(continued) been substantially revised since 1951; the most recent
effort at piecemeal reform was 1967. Since 1977 the
Legislature has been unable to reach agreement on
Election Code reform. But thanks to the labors of the
Election Code Study Committee, heeding the advice of a
broad-based advisory committee, a new, workable
Election Code has been produced on the third try.

Anyone who has ever tried to use the current,
much-amended version of the Texas Election Code quickly
finds that it is complicated and unwieldy at best,
contradictory and confusing at worst. Those who
administer elections, run for office, and vote need a
clear, concise, well-organized code.

The substantive changes in the recodification are the
result of months of negotiation by all political
factions and interest groups in the state, so they are
hardly controversial. Some seemingly modest changes
will have substantial benefits. Allowing consolidation
of election precincts in primary elections rather than
requiring a polling place in each precinct regardless
of size or turnout could save the state hundreds of
thousands of dollars. Tighter regulation of volunteer
deputy voter registrars would ensure that those who
register to vote will be added to the rolls in timely
fashion. Neither major party wishes to continue
holding two state conventions during a presidential
election year. In close elections, the recount
procedure should be uniform. Election officials should
be trained to administer balloting smoothly, and every
voter should be guaranteed the privacy of a voting
booth.

The waiting period to restore the right to vote to
persons convicted of a felony should be reduced. After
citizens have paid their debt to society and been
released from all state supervision after completion of
probation or parole, two years is long enough to wait
for restoration of this fundamental right.

OPPONENTS SB 616 would go well beyond simple recodification
SAY: of the Election Code and would make several substantive
changes. These important changes in election law
should be considered separately, in the same manner as
the chapter regulating political funds and campaigns.
This is especially true since the Calendars Committee
will not allow substantive floor amendments to SB 616.

SB 616
page 5

OPPONENTS
SAY:
(continued)

One substantive change that has raised serious objections would reduce the waiting period for restoration of voting rights to convicted felons from five years to two years. Only last session the House voted for an eight-year waiting period, then compromised by accepting five years. Denial of voting privileges is one of the penalties that felons must pay for committing a serious crime.

NOTES:

The Calendars Committee adopted a special rule for floor consideration of SB 616 barring any floor amendment to the bill other than to correct a technical or clerical error.

The Elections Committee rejected two proposed amendments by Rep. Carriker. One amendment would have required write-in candidates for independent-school-district trustee to file a declaration of write-in candidacy just as write-in candidates for state and county offices do. The other Carriker amendment would have struck a provision requiring a concise description of the location of a voter-registration applicant's address on the voter application in cases when the voter has no street address, only a post-office box.

The committee substitute adopted by the Senate State Affairs Committee had deleted a provision in the original version of SB 616 that would have reduced the waiting period for restoration of voting rights to a convicted felon from the current five years to two years. Sen. Washington offered a floor amendment to delete the waiting period entirely, but the amendment was tabled by a vote of 16 ayes, 14 nays. The Senate then adopted an amendment by Sen. Brooks to restore the original two-year waiting period in the bill by a vote of 16 ayes, 13 nays.

HB 2338 by Hackney and Blanton, proposing changes in the Election Code chapter regulating political-fund reporting and campaigns, is scheduled for a public hearing today in the Elections Committee. SB 1068 by Edwards, the Senate companion to HB 2338, is pending in the State Affairs Committee.

TAB F

CHAPTER 211

S.B. No. 616

An Act relating to the adoption of an election code; making conforming amendments and repeals and coordinating provisions; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The Election Code is adopted to read as follows:

ELECTION CODE

TITLE 1. INTRODUCTORY PROVISIONS

- Chapter 1. General Provisions
- Chapter 2. Vote Required for Election to Office
- Chapter 3. Ordering Election
- Chapter 4. Notice of Election

TITLE 2. VOTER QUALIFICATIONS AND REGISTRATION

- Chapter 11. Qualifications and Requirements for Voting
- Chapter 12. Voter Registrar
- Chapter 13. Application for Registration; Initial Registration
- Chapter 14. Renewal of Registration
- Chapter 15. General Administration of Registration
- Chapter 16. Cancellation of Registration
- Chapter 17. Judicial Review
- Chapter 18. Procedures for Identifying Registered Voters
- Chapter 19. Financing Voter Registration

TITLE 3. ELECTION OFFICERS AND OBSERVERS

- Chapter 31. Officers to Administer Elections
- Chapter 32. Election Judges and Clerks
- Chapter 33. Watchers
- Chapter 34. State Inspectors

TITLE 4. TIME AND PLACE OF ELECTIONS

- Chapter 41. Election Dates and Hours for Voting
- Chapter 42. Election Precincts
- Chapter 43. Polling Places

TITLE 5. ELECTION SUPPLIES

- Chapter 51. Election Supplies
- Chapter 52. Ballot Form, Content, and Preparation

TITLE 6. CONDUCT OF ELECTIONS

- Chapter 61. Conduct of Voting Generally
- Chapter 62. Preliminary Arrangements
- Chapter 63. Accepting Voter

69th LEGIS—REGULAR SESSION**CH 211, SEC 1**

Sec. 12.005. **BRANCH OFFICES.** The registrar may establish one or more branch offices in the county to conduct voter registration activities for the convenience of persons desiring to register. A branch office may be temporary or permanent. (V.T.E.C. Art. 5.20a, Subdiv. 2.)

Sec. 12.006. **REGULAR DEPUTY REGISTRARS.** (a) The registrar may appoint one or more deputy registrars to assist in the registration of voters.

(b) In this code, "regular deputy registrar" means a deputy registrar appointed under this section.

(c) Except as provided by Subsection (d), a regular deputy registrar has the same authority as the registrar, subject to the registrar's supervision.

(d) A regular deputy registrar may not hear or determine a challenge under this title. (V.T.E.C. Art. 5.09a, Subdiv. 2.)

[Sections 12.007-12.030 reserved for expansion]

SUBCHAPTER B. COUNTY CLERK AS VOTER REGISTRAR

Sec. 12.031. **DESIGNATION OF COUNTY CLERK AS VOTER REGISTRAR.** The commissioners court by written order may designate the county clerk as the voter registrar for the county if the county clerk and county tax assessor-collector agree to the designation. (V.T.E.C. Art. 5.09b, Subdiv. 1.)

Sec. 12.032. **DESIGNATION ORDER.** (a) The order designating the county clerk as the voter registrar must state the effective date of the transfer of voter registration duties and functions to the county clerk.

(b) The county clerk shall deliver a certified copy of the order to the secretary of state and comptroller of public accounts not later than the third day after the date the order is adopted. (V.T.E.C. Art. 5.09b, Subdiv. 1.)

Sec. 12.033. **APPROPRIATION BY COMMISSIONERS COURT.** The amount initially appropriated by the commissioners court for the voter registration activities of the county clerk may not be less than the amount last appropriated to the county's voter registrar for the same purpose. (V.T.E.C. Art. 5.09b, Subdiv. 3.)

Sec. 12.034. **RESCISSION OF DESIGNATION ORDER.** (a) The commissioners court by written order may rescind the order designating the county clerk as the voter registrar at any time after two years have elapsed from the date the order was adopted, to become effective on a date stated in the order.

(b) Not later than the third day after the date the rescission order is adopted, the county clerk shall deliver a certified copy of the order to the secretary of state and comptroller of public accounts.

(c) On the effective date of the rescission, the county tax assessor-collector is the voter registrar for the county unless the position of county elections administrator is created. (V.T.E.C. Art. 5.09b, Subdiv. 1.)

CHAPTER 13. APPLICATION FOR REGISTRATION; INITIAL REGISTRATION**SUBCHAPTER A. ELIGIBILITY; MANNER OF APPLYING FOR REGISTRATION**

Sec. 13.001. **ELIGIBILITY FOR REGISTRATION**

Sec. 13.002. **APPLICATION REQUIRED**

Sec. 13.003. **APPLICATION BY AGENT**

Sec. 13.004. **RECORDING OF TELEPHONE NUMBER BY REGISTRAR PROHIBITED**

Sec. 13.005. **UNLAWFULLY ACTING AS AGENT**

Sec. 13.006. **PURPORTEDLY ACTING AS AGENT**

Sec. 13.007. **SOLICITATION OF FALSE STATEMENT ON APPLICATION**

[Sections 13.008-13.030 reserved for expansion]

SUBCHAPTER B. VOLUNTEER DEPUTY REGISTRARS; HIGH SCHOOL DEPUTY REGISTRARS

Sec. 13.031. **APPOINTMENT; TERM**

Sec. 13.032. **PROHIBITION ON REFUSING TO APPOINT**

Sec. 13.033. **CERTIFICATE OF APPOINTMENT**

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Sec. 13.034. ACTIVE APPOINTMENT FILE
Sec. 13.035. INACTIVE APPOINTMENT FILE
Sec. 13.036. TERMINATION OF APPOINTMENT
Sec. 13.037. COMPENSATION; BOND
Sec. 13.038. POWERS GENERALLY
Sec. 13.039. REVIEW OF APPLICATION
Sec. 13.040. ISSUANCE OF RECEIPT
Sec. 13.041. EFFECT OF SUBMISSION OF APPLICATION
Sec. 13.042. DELIVERY OF APPLICATION TO REGISTRAR
Sec. 13.043. FAILURE TO DELIVER APPLICATION
Sec. 13.044. PURPORTEDLY ACTING AS VOLUNTEER DEPUTY REGISTRAR
Sec. 13.045. ACTIVITY ON GOVERNMENTAL PREMISES
Sec. 13.046. HIGH SCHOOL DEPUTY REGISTRARS
[Sections 13.047-13.070 reserved for expansion]

SUBCHAPTER C. ACTION ON APPLICATION BY REGISTRAR

Sec. 13.071. REVIEW OF APPLICATION
Sec. 13.072. ACTION ON APPLICATION
Sec. 13.073. NOTICE OF REJECTION
Sec. 13.074. CHALLENGE OF APPLICANT
Sec. 13.075. NOTICE OF CHALLENGE TO APPLICANT
Sec. 13.076. REQUEST FOR HEARING ON CHALLENGE
Sec. 13.077. HEARING ON CHALLENGE
Sec. 13.078. NOTICE OF HEARING
Sec. 13.079. DETERMINATION OF CHALLENGE
Sec. 13.080. RECORDING REJECTION
[Sections 13.081-13.100 reserved for expansion]

SUBCHAPTER D. APPLICATION FILES

Sec. 13.101. ACTIVE APPLICATION FILE
Sec. 13.102. INACTIVE APPLICATION FILE
Sec. 13.103. PLACE FOR KEEPING FILES; SECURITY
[Sections 13.104-13.120 reserved for expansion]

SUBCHAPTER E. OFFICIAL APPLICATION FORMS

Sec. 13.121. OFFICIAL FORM FOR REGISTRATION BY MAIL
Sec. 13.122. ADDITIONAL ELEMENTS ON OFFICIAL FORM
[Sections 13.123-13.140 reserved for expansion]

SUBCHAPTER F. INITIAL REGISTRATION

Sec. 13.141. REGISTRATION NUMBER
Sec. 13.142. INITIAL REGISTRATION CERTIFICATE
Sec. 13.143. EFFECTIVE DATE OF REGISTRATION; PERIOD OF EFFECTIVENESS
Sec. 13.144. DELIVERY OF INITIAL CERTIFICATE TO VOTER
Sec. 13.145. UNLAWFUL DELIVERY OF CERTIFICATE

69th LEGIS—REGULAR SESSION

CH 211, SEC 1

CHAPTER 13. APPLICATION FOR REGISTRATION; INITIAL
REGISTRATIONSUBCHAPTER A. ELIGIBILITY; MANNER OF APPLYING FOR
REGISTRATION

Sec. 13.001. **ELIGIBILITY FOR REGISTRATION.** (a) To be eligible for registration as a voter in this state, a person must:

- (1) be 18 years of age or older;
- (2) be a United States citizen;
- (3) not have been determined mentally incompetent by a final judgment of a court;
- (4) not have been finally convicted of a felony or, if so convicted, must have:
 - (A) received a certificate of discharge by the Board of Pardons and Paroles or completed a period of probation ordered by a court and at least two calendar years have elapsed from the date of the receipt or completion; or
 - (B) been pardoned or otherwise released from the resulting disability to vote; and
- (5) be a resident of the county in which application for registration is made.

(b) To be eligible to apply for registration, a person must, on the date the registration application is submitted to the registrar, be at least 17 years and 10 months of age and satisfy the requirements of Subsection (a) except for age. (V.T.E.C. Art. 5.10a; New.)

Sec. 13.002. **APPLICATION REQUIRED.** (a) A person desiring to register to vote must submit an application to the registrar of the county in which the person resides.

(b) A registration application must be in writing and signed by the applicant.

(c) A registration application must include:

- (1) the applicant's name as follows:
 - (A) first name, middle name, if any, and surname; or
 - (B) first name, maiden name, and husband's surname if the applicant is a married woman using the husband's surname;
- (2) the applicant's sex;
- (3) the month, day, and year of the applicant's birth;
- (4) a statement that the applicant is a United States citizen;
- (5) if the applicant is a naturalized citizen, the location of the court of naturalization;
- (6) a statement that the applicant is a resident of the county;
- (7) a statement that the applicant has not been determined mentally incompetent by a final judgment of a court;
- (8) a statement that the applicant has not been finally convicted of a felony or that the applicant is a felon eligible for registration under Section 13.001(a)(4);
- (9) if the applicant is currently registered in another county, the name of that county and the applicant's residence address on the registration certificate for that county;
- (10) the applicant's residence address or, if the residence has no address, the address at which the applicant receives mail and a concise description of the location of the applicant's residence; and
- (11) if the application is made by an agent, a statement of the agent's relationship to the applicant.

(d) The omission of the applicant's middle or maiden name under Subsection (c)(1) does not affect the validity of a registration application, and the registrar may not reject the application because of that omission. (V.T.E.C. Art. 5.01; Art. 5.13a, Subdiv. 1; Art. 5.13b, Subdiv. 1; Art. 5.18a, Subdiv. 3; New.)

Sec. 13.003. **APPLICATION BY AGENT.** (a) An applicant may appoint, either orally or in writing, an agent to perform one or more of the following acts for the applicant:

- (1) complete and sign a registration application;
- (2) submit an application;
- (3) act on the applicant's behalf in the process of approving the application, including a challenge of the applicant; and
- (4) receive a registration certificate in person.

(b) To be eligible for appointment as an agent, a person must:

- (1) be the applicant's spouse, parent, or child; and
- (2) be a qualified voter of the county or have submitted a registration application and be otherwise eligible to vote. (V.T.E.C. Art. 5.13a, Subdiv. 3; New.)

Sec. 13.004. **RECORDING OF TELEPHONE NUMBER BY REGISTRAR PROHIBITED.** The registrar may not transcribe, copy, or otherwise record a telephone number furnished on a registration application. (V.T.E.C. Art. 5.13b, Subdiv. 2.)

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Sec. 13.005. **UNLAWFULLY ACTING AS AGENT.** (a) A person commits an offense if the person acts as an agent for an applicant but is not eligible for appointment as an agent under Section 13.003(b).

(b) An offense under this section is a Class B misdemeanor. (V.T.E.C. Art. 5.13a, Subdiv. 3.)

Sec. 13.006. **PURPORTEDLY ACTING AS AGENT.** (a) A person commits an offense if the person purports to act as an agent in applying for registration or in signing a registration application at a time when the person:

(1) is not an agent of the applicant under Section 13.003(a); and

(2) is not eligible for appointment under Section 13.003(b) as the agent of the person for whom he purports to act.

(b) An offense under this section is a felony of the third degree. (V.T.E.C. Art. 5.13a, Subdiv. 5.)

Sec. 13.007. **SOLICITATION OF FALSE STATEMENT ON APPLICATION.** (a) A person commits an offense if the person requests, commands, or attempts to induce another person to make a false statement on a registration application.

(b) An offense under this section is a felony of the third degree. (V.T.E.C. Art. 15.74.)

[Sections 13.008-13.030 reserved for expansion]

**SUBCHAPTER B. VOLUNTEER DEPUTY REGISTRARS; HIGH SCHOOL
DEPUTY REGISTRARS**

Sec. 13.031. **APPOINTMENT; TERM.** (a) To encourage voter registration, the registrar shall appoint as deputy registrars persons who volunteer to serve.

(b) In this code, "volunteer deputy registrar" means a deputy registrar appointed under this section.

(c) Volunteer deputy registrars serve for terms expiring December 31 of even-numbered years.

(d) To be eligible for appointment as a volunteer deputy registrar, a person must be 18 years of age or older. (V.T.E.C. Art. 5.20a, Subdiv. 4; New.)

Sec. 13.032. **PROHIBITION ON REFUSING TO APPOINT.** A registrar may not refuse to appoint as a volunteer deputy registrar:

(1) a resident of the county served by the registrar; or

(2) any person on the basis of sex, race, creed, color, or national origin or ancestry. (V.T.E.C. Art. 5.20a, Subdiv. 5.)

Sec. 13.033. **CERTIFICATE OF APPOINTMENT.** (a) A person desiring to serve as a volunteer deputy registrar must request appointment by the registrar in person or by mail.

(b) If a person is to be appointed, the registrar shall prepare a certificate of appointment in duplicate containing:

(1) the date of appointment;

(2) the statement: "I, _____, Voter Registrar for _____ County, do hereby appoint _____ as a volunteer deputy registrar for _____ County.";

(3) the person's residence address;

(4) the person's voter registration number, if any;

(5) a statement that the term of the appointment expires December 31 of an even-numbered year; and

(6) a statement that the appointment terminates on the person's final conviction for an offense for failure to deliver a registration application.

(c) The registrar shall sign the certificate and issue the original to the appointee, who shall sign it on receipt.

(d) A volunteer deputy shall present the certificate as identification to an applicant for registration, on request, when receiving the application for delivery to the registrar. (New.)

Sec. 13.034. **ACTIVE APPOINTMENT FILE.** (a) The registrar shall maintain a file containing the duplicate certificates of appointment of the volunteer deputy registrars whose appointments are effective.

(b) The registrar shall maintain the file in alphabetical order by deputy name on a countywide basis.

(c) Each certificate shall be retained on file during the time the appointment is effective. (New.)

Sec. 13.035. **INACTIVE APPOINTMENT FILE.** (a) The registrar shall maintain a file containing the duplicate certificates of appointment of the volunteer deputy registrars whose appointments have been terminated.

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(b) The registrar shall enter the date of and reason for termination on each duplicate certificate.

(c) The registrar shall maintain the file in alphabetical order by deputy name on a countywide basis.

(d) Each certificate shall be retained on file for two years after the date of termination. (New.)

Sec. 13.036. TERMINATION OF APPOINTMENT. (a) An appointment as a volunteer deputy registrar is terminated on:

(1) the expiration of the volunteer deputy's term of appointment; or

(2) the final conviction of the volunteer deputy for an offense prescribed by Section 13.043.

(b) Immediately on the termination of an appointment, the registrar shall deliver written notice of the termination to the volunteer deputy, directing the deputy:

(1) to stop activity as a volunteer deputy registrar immediately; and

(2) to deliver the certificate of appointment, receipt forms, and registration applications and receipts in the volunteer deputy's possession to the registrar not later than the second day after the date the deputy receives the termination notice.

(c) The registrar shall reject all registration applications received by a person purporting to act as a volunteer deputy registrar after the person's appointment is terminated.

(d) The registrar may not reappoint a person whose appointment as a volunteer deputy registrar is terminated under Subsection (a)(2). (New.)

Sec. 13.037. COMPENSATION; BOND. (a) A volunteer deputy registrar serves without pay unless compensation is authorized by the commissioners court.

(b) An unpaid volunteer deputy is not required to give a bond in connection with the deputy's service. (V.T.E.C. Art. 5.20a, Subdiv. 1.)

Sec. 13.038. POWERS GENERALLY. A volunteer deputy registrar may distribute voter registration application forms throughout the county and receive registration applications submitted to him in person. (New.)

Sec. 13.039. REVIEW OF APPLICATION. (a) On receipt of a registration application, a volunteer deputy registrar shall review it for completeness in the applicant's presence.

(b) If the application does not contain all the required information and the required signature, the volunteer deputy shall return the application to the applicant for completion and resubmission. (New.)

Sec. 13.040. ISSUANCE OF RECEIPT. (a) On receipt of a completed registration application, a volunteer deputy registrar shall prepare a receipt in duplicate on a form furnished by the registrar.

(b) The receipt must contain:

(1) the name of the applicant and, if applicable, the name of the applicant's agent; and

(2) the date the completed application is submitted to the volunteer deputy.

(c) The volunteer deputy shall sign the receipt in the applicant's presence and shall give the original to the applicant.

(d) The volunteer deputy shall deliver the duplicate receipt to the registrar with the registration application. The registrar shall retain the receipt on file with the application. (New.)

(e) The secretary of state may prescribe a procedure that is an alternative to the procedure prescribed by this section that will ensure the accountability of the registration applications.

Sec. 13.041. EFFECT OF SUBMISSION OF APPLICATION. The date of submission of a completed registration application to a volunteer deputy registrar is considered to be the date of submission to the registrar for the purpose of determining the effective date of registration only. (New.)

Sec. 13.042. DELIVERY OF APPLICATION TO REGISTRAR. (a) A volunteer deputy registrar shall deliver in person to the registrar each completed voter registration application submitted to the deputy, as provided by this section.

(b) Except as provided by Subsection (c), an application shall be delivered to the registrar not later than 5 p.m. of the fifth day after the date the application is submitted to the volunteer deputy registrar.

(c) An application submitted after the 34th day and before the 29th day before the date of an election in which any qualified voter of the county is eligible to vote shall be delivered not later than 5 p.m. of the 29th day before election day. (New.)

Sec. 13.043. FAILURE TO DELIVER APPLICATION. (a) A volunteer deputy registrar commits an offense if the deputy fails to comply with Section 13.042.

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(b) Except as provided by Subsection (c), an offense under this section is a Class C misdemeanor.

(c) An offense under this section is a Class A misdemeanor if the deputy's failure to comply is intentional. (New.)

Sec. 13.044. PURPORTEDLY ACTING AS VOLUNTEER DEPUTY REGISTRAR. (a) A person commits an offense if the person purports to act as a volunteer deputy registrar when the person does not have an effective appointment as a volunteer deputy registrar.

(b) An offense under this section is a Class C misdemeanor. (New.)

Sec. 13.045. ACTIVITY ON GOVERNMENTAL PREMISES. Except as otherwise provided by law, the chief executive of a state agency with approval of the agency's governing body, if any, the chief executive of a department of a city with approval of the city's governing body, or a county officer may permit an officer or employee under the chief executive's or officer's supervision who is a volunteer deputy registrar to engage in official registration activities during working hours on the premises under the chief executive's or officer's control. (V.T.E.C. Art. 5.20a, Subdiv. 3.)

Sec. 13.046. HIGH SCHOOL DEPUTY REGISTRARS. (a) Each principal of a public high school or his designee shall serve as a deputy registrar for the county in which the school is located.

(b) In this code, "high school deputy registrar" means a deputy registrar serving under this section.

(c) A high school deputy registrar may distribute registration application forms to and receive registration applications submitted to him in person from students and employees of the school only.

(d) During the final month of each school semester, a high school deputy registrar shall distribute an officially prescribed registration application form to each student who is or will be 18 years of age or older during that semester.

(e) Each application form distributed under this section must be accompanied by a notice informing the student or employee that the application may be submitted in person or by mail to the voter registrar of the county in which the applicant resides or in person to a high school deputy registrar or volunteer deputy registrar for delivery to the voter registrar of the county in which the applicant resides.

(f) Except as provided by this subsection, Sections 13.039, 13.040, 13.041, and 13.042 apply to the submission and delivery of registration applications under this section, and for that purpose, "volunteer deputy registrar" in those sections includes a high school deputy registrar. A high school deputy registrar may review an application for completeness out of the applicant's presence. A deputy may deliver a group of applications to the registrar by mail in an envelope or package, and, for the purpose of determining compliance with the delivery deadline, an application delivered by mail is considered to be delivered at the time of its receipt by the registrar.

(g) A high school deputy registrar commits an offense if the deputy fails to comply with Section 13.042. An offense under this subsection is a Class C misdemeanor unless the deputy's failure to comply is intentional, in which case the offense is a Class A misdemeanor.

(h) The secretary of state shall prescribe any additional procedures necessary to implement this section. (V.T.E.C. Art. 5.20a, Subdiv. 6; Art. 5.20b; New.)

[Sections 13.047-13.070 reserved for expansion]

SUBCHAPTER C. ACTION ON APPLICATION BY REGISTRAR

Sec. 13.071. REVIEW OF APPLICATION. (a) The registrar shall review each submitted application for registration to determine whether it complies with Section 13.002 and indicates that the applicant is eligible for registration.

(b) The registrar shall make the determination not later than the seventh day after the date the application is submitted to the registrar. (V.T.E.C. Art. 5.14a, Subdiv. 2; New.)

Sec. 13.072. ACTION ON APPLICATION. (a) If the registrar determines that an application complies with Section 13.002 and indicates that the applicant is eligible for registration, the registrar shall approve the application unless the registrar challenges the applicant.

(b) After approval of an application by an applicant who was registered in another county at the time of application, the registrar shall deliver written notice of the applicant's change of residence to the other county's registrar and include in the notice the applicant's name, former residence address, and former registration number, if known.

(c) If the registrar determines that an application does not comply with Section 13.002 or does not indicate that the applicant is eligible for registration, the registrar shall reject the

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application. (V.T.E.C. Art. 5.14a, Subdiv. 2(a); Art. 5.15a, Subdiv. 1(b); Art. 5.17a(1); Art. 5.18a, Subdiv. 4.)

Sec. 13.073. NOTICE OF REJECTION. (a) Except as provided by Subsection (b), the registrar shall deliver written notice of the reason for the rejection of an application to the applicant not later than the second day after the date of rejection.

(b) If the registrar rejects an application in the applicant's presence, at that time the registrar shall orally inform the applicant of the reason for the rejection. If the rejection is for incompleteness, the registrar shall return the application to the applicant for completion and resubmission. (New.)

Sec. 13.074. CHALLENGE OF APPLICANT. (a) If after determining that an application complies with Section 13.002 and indicates that the applicant is eligible for registration, the registrar has reason to believe the applicant is not eligible for registration or the application was submitted in an unauthorized manner, the registrar shall challenge the applicant.

(b) The registrar shall indicate on the application of a challenged applicant that the applicant's eligibility or the manner of submission of the application has been challenged and the date of the challenge.

(c) The registrar may not challenge an applicant later than the second day after the date the application is determined to comply with Section 13.002 and indicate that the applicant is eligible for registration. (V.T.E.C. Art. 5.17a(1); New.)

Sec. 13.075. NOTICE OF CHALLENGE TO APPLICANT. (a) Except as provided by Subsection (c), the registrar shall deliver written notice of the challenge to the applicant not later than the second day after the date of the challenge.

(b) The notice must include:

- (1) the date of the challenge;
- (2) a statement of the grounds for the challenge; and
- (3) a brief explanation of the applicant's right to a hearing on the challenge and the right to appeal the registrar's decision.

(c) If a challenge is made in the applicant's presence, at that time the registrar shall orally explain to the applicant the grounds for the challenge and the applicant's right to a hearing and appeal. (New.)

Sec. 13.076. REQUEST FOR HEARING ON CHALLENGE. (a) Except as provided by Subsection (b), to be entitled to a hearing on a challenge, the applicant must file a written, signed request for a hearing with the registrar not later than the 10th day after the date of the challenge.

(b) If a challenge is made in the applicant's presence, at that time the applicant may orally request a hearing. (New.)

Sec. 13.077. HEARING ON CHALLENGE. (a) On the timely filing or making of a hearing request, the registrar shall schedule a hearing on the challenge.

(b) The registrar shall conduct the hearing not later than the 10th day after the date the request is filed or made or at a later date on the applicant's request.

(c) The applicant may appear personally at the hearing to offer evidence or argument. The applicant may offer evidence or argument by affidavit without personally appearing if the applicant submits the affidavit to the registrar before the hearing begins.

(d) If a challenge is made in the applicant's presence and the applicant orally requests a hearing, the hearing may be conducted at that time with the applicant's consent. (V.T.E.C. Art. 5.17a(1); New.)

Sec. 13.078. NOTICE OF HEARING. (a) The registrar shall deliver to a challenged applicant written notice of the date, hour, and place set for the hearing on the challenge not later than the second day after the date the hearing request is filed or made.

(b) This section does not apply to a hearing conducted under Section 13.077(d). (New.)

Sec. 13.079. DETERMINATION OF CHALLENGE. (a) After hearing and considering the evidence or argument, the registrar shall promptly determine the challenge and issue a decision in writing.

(b) If the registrar determines that the applicant is eligible for registration or that the manner of submission of the application was authorized, the registrar shall approve the application.

(c) If the registrar determines that the applicant is not eligible for registration or that the manner of submission of the application was unauthorized, the registrar shall reject the application.

(d) The registrar shall retain a copy of the decision on file with the applicant's registration application and shall deliver a copy to the applicant. (V.T.E.C. Art. 5.17a(1); New.)

Sec. 13.080. RECORDING REJECTION. On rejection of an applicant's registration application, the registrar shall enter the date of and reason for the rejection on the application. (V.T.E.C. Art. 5.15a, Subdiv. 1(b).)

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[Sections 13.081-13.100 reserved for expansion]

SUBCHAPTER D. APPLICATION FILES

Sec. 13.101. **ACTIVE APPLICATION FILE.** (a) The registrar shall maintain a file containing the approved registration applications of the registered voters of the county.

(b) The registrar shall maintain the file in alphabetical order by voter name on a countywide basis. However, the registrar may maintain the file in numerical order by registration number if the registrar regularly maintains a list of registered voters in alphabetical order by voter name on a countywide basis.

(c) Each application shall be retained on file during the time the registration is effective. (V.T.E.C. Art. 5.15a, Subdiv. 1(a).)

Sec. 13.102. **INACTIVE APPLICATION FILE.** (a) The registrar shall maintain a file containing the rejected applications of applicants for registration.

(b) The registrar shall maintain a file, separate from the file maintained under Subsection (a), containing the applications of the voters whose registrations have been canceled.

(c) The registrar shall maintain each file in alphabetical order by applicant or voter name on a countywide basis.

(d) Each application shall be retained on file for two years after the date of rejection or cancellation. (V.T.E.C. Art. 5.15a, Subdiv. 1(b).)

Sec. 13.103. **PLACE FOR KEEPING FILES; SECURITY.** (a) The registration application files maintained under this subchapter shall be kept in the registrar's office at all times in a place and manner ensuring their security.

(b) Applications may be removed from the registrar's office temporarily, in a manner ensuring their security, for use in preparing registration certificates, lists of registered voters, and other registration documents by electronic data-processing methods. (V.T.E.C. Art. 5.15a, Subdiv. 3.)

[Sections 13.104-13.120 reserved for expansion]

SUBCHAPTER E. OFFICIAL APPLICATION FORMS

Sec. 13.121. **OFFICIAL FORM FOR REGISTRATION BY MAIL.** (a) The officially prescribed application form for registration by mail must be in the form of a business reply postcard, unless another form or system is used under Subsection (b), with postage paid by the state. The secretary of state shall design the form to enhance the legibility of its contents.

(b) The secretary of state shall obtain a permit from the United States Postal Service for use of the postage-paid application form and shall arrange for payment of the postal charges with warrants issued by the comptroller of public accounts. The secretary may use any other form or system made available by the United States Postal Service if the form or system is less costly than the business reply system.

(c) The secretary of state shall have the official application forms for registration by mail printed and shall furnish the forms without charge to each registrar in a quantity the secretary determines sufficient for the proper conduct of voter registration.

(d) The secretary of state shall prescribe the procedures necessary to implement this section. (V.T.E.C. Art. 5.13a, Subdiv. 1; New.)

Sec. 13.122. **ADDITIONAL ELEMENTS ON OFFICIAL FORM.** (a) In addition to the other statements and spaces for entering information that appear on an officially prescribed registration application form, each official form must include:

(1) the statement: "I understand that the giving of false information to procure the registration of a voter is a felony.";

(2) a space for the applicant's registration number;

(3) a space for the number of the county election precinct in which the applicant resides;

(4) a space for the applicant's telephone number;

(5) a space for the applicant's social security number; and

(6) a statement indicating that the furnishing of the applicant's election precinct number, telephone number, and social security number is optional.

(b) If it becomes permissible under federal law to require an applicant for registration who has a social security number to furnish the number, the secretary of state may implement that requirement. (V.T.E.C. Art. 5.13a, Subdiv. 1; Art. 5.13b, Subdiv. 2.)

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[Sections 13.123-13.140 reserved for expansion]

SUBCHAPTER F. INITIAL REGISTRATION

Sec. 13.141. REGISTRATION NUMBER. (a) The registrar shall assign a registration number to each person to be registered as a voter.

(b) The secretary of state may prescribe a uniform system for assigning voter registration numbers. If a uniform system is not prescribed, the registrar shall use a system that promotes efficient and accurate administration of voter registration. (V.T.E.C. Art. 5.14a, Subdiv. 1(b).)

Sec. 13.142. INITIAL REGISTRATION CERTIFICATE. (a) After approval of a registration application, the registrar shall:

(1) prepare a voter registration certificate in duplicate and issue the original certificate to the applicant; and

(2) enter the applicant's county election precinct number and registration number on the applicant's registration application.

(b) In this code, "initial certificate" means a registration certificate issued under this section.

(c) An initial certificate takes effect on the effective date of the registration and expires the following March 1 of an even-numbered year. (V.T.E.C. Art. 5.14a, Subdivs. 1, 2.)

Sec. 13.143. EFFECTIVE DATE OF REGISTRATION; PERIOD OF EFFECTIVENESS. (a) Except as provided by Subsection (b), if an applicant's registration application is approved, the registration becomes effective on the 30th day after the date the application is submitted to the registrar or on the date the applicant becomes 18 years of age, whichever is later.

(b) A registration is effective for purposes of voting absentee if it will be effective on election day.

(c) A registration is effective until canceled.

(d) For purposes of determining the effective date of a registration, an application submitted by mail is considered to be submitted to the registrar on the date it is placed with postage prepaid and properly addressed in the United States mail. The date indicated by the post office cancellation mark is considered to be the date the application was placed in the mail unless proven otherwise. (V.T.E.C. Art. 5.13a, Subdiv. 4; New.)

Sec. 13.144. DELIVERY OF INITIAL CERTIFICATE TO VOTER. (a) The registrar shall deliver the original of an initial certificate:

(1) in person to the applicant or the applicant's agent appointed under Section 13.003; or

(2) by mail to the applicant.

(b) If delivery is by mail, the registrar shall send the certificate to the mailing address on the applicant's registration application.

(c) The registrar shall deliver the certificate in time for the applicant to receive it before the effective date of the registration. (V.T.E.C. Art. 5.14a, Subdiv. 2(a).)

Sec. 13.145. UNLAWFUL DELIVERY OF CERTIFICATE. (a) A voter registrar commits an offense if the registrar knowingly delivers a registration certificate to a person other than the applicant or the applicant's agent appointed under Section 13.003.

(b) An offense under this section is a felony of the third degree. (V.T.E.C. Art. 5.14a, Subdiv. 2(d).)

CHAPTER 14. RENEWAL OF REGISTRATION

SUBCHAPTER A. ISSUANCE OF RENEWAL CERTIFICATE

Sec. 14.001. RENEWAL REGISTRATION CERTIFICATE

Sec. 14.002. DELIVERY OF RENEWAL CERTIFICATE TO VOTER

[Sections 14.003-14.020 reserved for expansion]

SUBCHAPTER B. RETURN OF RENEWAL CERTIFICATE

Sec. 14.021. LIST OF RETURNED CERTIFICATES

Sec. 14.022. DISPOSITION OF RETURNED CERTIFICATE

Sec. 14.023. ERRONEOUS RETURN OF RENEWAL CERTIFICATE

Sec. 14.024. AVAILABILITY OF REGISTRAR'S LIST

Sec. 14.025. DELIVERY OF LIST TO SECRETARY OF STATE

Sec. 14.026. AVAILABILITY OF SECRETARY OF STATE'S LIST