



October 19, 2011

Janie Smith
Texas Department of Public Safety
Austin, Texas 78773

Dear Ms. Smith:

LWV-Texas writes to raise concerns about proposed rules for implementing the new Election Identification Certificate (EIC) established under SB 14 requiring voters to show limited qualified photo IDs to be accepted for voting beginning in 2012. According to SB 14, to be accepted the photo ID must be current or have expired no more than 60 days prior to the election. The new EIC is to be available at no charge to those who do not otherwise have a qualified photo ID and are registered to vote or register to vote at the time of application for the EIC.

The right to vote is a fundamental right of citizenship. Rules implementing the EIC are crucial to ensuring that eligible Texas voters will have access to a qualified photo ID required to vote as of 2012 and not be needlessly disenfranchised. Some proposed provisions for implementing the EIC are not necessary to establish a voter's identity and are likely to result in denying some Texas citizens their right to vote.

Rule Sec. 15.181 (d) (1, 2, 4, 5)

Under the wording of this section, those with a US passport or Texas DPS-issued driver's license, personal ID or concealed handgun license would only be eligible to apply for an EIC if the passport or DPS ID had expired by more than 60 days at the time of application for the EIC. Under this rule, a voter whose existing photo ID would be expired by 61 days at the time of the election would have only a single day to apply for and receive the EIC needed to be able to vote. This is inordinately and unnecessarily restrictive. Those whose existing photo ID will expire more than 60 days prior to the election should be allowed a reasonable period to apply for and receive the EIC. The effective date of the EIC could be 60 days after the expiration of the voter's existing photo ID, but, because SB 14 limits use of the EIC to identification only for voting, staggering the effective date would not seem necessary.

The relationship between the expiration of the ID and the date of the election should be used to determine eligibility to apply for the EIC. If the existing ID will not be qualified at the polls because it will have expired more than 60 days prior to next election, the voter should be able to apply for the EIC. At the very least, a voter should have at least 60 days plus whatever processing time DPS requires for the EIC application. If it can take 30 days for the voter to receive the EIC, the application window should begin 90 days prior to the election so that the voter has a 60 day window for application and DPS has 30 days to process and provide the identification.

DPS rules need to make clear to applicants for the EIC and other DPS-issued IDs that are qualified under SB 14 the maximum length of time DPS will need to process the application and whether a receipt issued at the time of application will be considered a qualified ID for purposes of voting if the voter has not received the actual ID for which application is made by the date of the election.

Rule Sec. 15.182 (2, 3, 4)

The EIC provides an avenue for those who need a photo ID solely for purposes of voting to obtain a qualified ID at no charge. Limiting qualified IDs to those that require a fee would be tantamount to a poll tax. The EIC by law can only be used for identification at the polls and is to prevent the imposition of a de facto poll tax, therefore the documentation of identity required with the EIC application should be at least as broadly specified as that for other DPS IDs and as inexpensive to obtain as possible. LWV-TX is concerned that the documentation required by the proposed rule is more restrictive than that required for other DPS-issued ID's which can be used for multiple purposes and in some cases require considerable expense.

Primary Identification. Limiting primary identification to Texas DPS-issued driver's licenses and personal identification cards that have expired at least 60 days but not more than 2 years is arbitrary and unnecessary to establish the voter's identity, the sole purpose of the EIC. This limitation on primary identification makes access to the EIC more restricted than access to other IDs qualified under SB 14 which is at odds with the purpose of providing a photo ID at no cost to voters who need such ID solely for the purpose of voting.

All photo IDs qualified under SB 14 and all primary identification accepted for a DPS DL or ID that establish citizenship should be accepted as primary identification for the EIC without regard to the length of time the ID has been expired. As noted in comments on Rule Sec. 15.181 (d) (1, 2, 4, 5), EIC applications must be accepted by DPS before the applicant's existing ID has been expired for more than 60 days, and the 24 month cut-off has no true bearing on the reliability of the identifying documents for this purpose of the EIC. Wording requiring an "identifiable photo" would be sufficient to address situations in which the photo on an ID expired more than two years cannot reasonably be used to identify the applicant.

Secondary Identification. Allowing only two types of secondary identification, either an original or certified copy of a birth certificate indicating US citizenship or original or certified copies of court documents ordering a change of name or gender and including the name and date of birth, are troubling by themselves and particularly troubling given the severely limited primary identification proposed. Under the proposed rule many would be unable to provide the documentation of identity required for the EIC. Included in this group are individuals who cannot afford to secure the certified copy of their birth certificate, those who cannot produce the documentation needed to secure a certified copy of their birth certificate, and those for whom no birth certificate is available, despite being born a US citizen. Also unable to obtain the EIC would be naturalized citizens whose citizenship papers are so old that they do not include a photo or who have lost their citizenship papers.

Supporting Identification. The point of having a limited-use EIC is that it should be easier, not more difficult, to obtain than other qualified IDs. The specified list of supporting identification documents should be expanded to be at least as broad as that for securing a DPS-issued DL or ID. Further, the list of supporting identification should include the documents required by the Bureau of Vital Statistics for obtaining a birth certificate.

Ms. Janie Smith

Page 3

The list of accepted identification needs to be complete. Indicating the list is not all inclusive is a dis-service to eligible Texas voters who may already have documents that would be accepted but because those documents aren't listed falsely believe they must go to considerable difficulty and expense to obtain documents specifically listed. Failure to indicate the complete list of acceptable documents would likely result in inconsistent DPS decisions on whether voters are or are not able to receive an EIC.

Rule Sec. 15.183 (a) (1) (A)

This provision begins with a reference to married women but then indicates application is to both sexes. It would be best if the entire provision were in gender-neutral language.

The documentation that will be accepted for name changes must be detailed so that DPS can make consistent decisions and, at least as important, voters applying for the EIC can come prepared with all documents they will need. Voters, DPS, and all others applying at DPS will be better served if each applicant comes with all needed documents and this is only possible if the specific documents that will be accepted are known to the public. It is best for all concerned if Texas can avoid unfortunate incidents that have captured media or YouTube attention of voters, sometimes elderly individuals who have voted in every election, who learn only after a long wait to apply for a needed photo ID that they do not have a necessary document with them.

SB 14 requires that the name on the photo ID match the name on the voter registration list. The Secretary of State has issued the proposed rule for substantially similar names. The requirement in this provision for three names may be inconsistent with a registered voter's name on the voter registration list and may not be consistent with the SOS similar name standards. Because the EIC can only be used for purposes of voting, registered voters should be allowed to apply for the EIC using the name on their voter registration. DPS must ensure that all those who submit a voter registration application at the time they apply for an EIC use the same name on both applications.

LWV-TX appreciates the opportunity to comment on the proposed rules for the EIC. The right to vote is fundamental to citizenship and representative democracy. When new requirements on photo ID go into effect, it is important that Texas citizens without a qualified photo ID have access to the EIC and understand exactly what is necessary to obtain one, and that EIC requirements don't become a de facto poll tax.

If additional information is needed, please contact LWV-TX Vice President Linda Krefting, lkrefting@att.net, 806-793-6136.

Sincerely,

Karen Nicholson
President, LWV-TX