

Nomination of Thomas Perez
Question from Senator John Cornyn

1. As you may know, the Texas Legislature is considering a voter identification law for elections in the State of Texas. The Supreme Court, in a 6-3 decision last year, upheld Indiana's voter identification law. But were the State of Texas to enact such a voter ID statute—even one that was identical to the Indiana statute that was found constitutional—the law could only be implemented after the Civil Rights Division conducted a preclearance review under Section 5 of the Voting Rights Act.

Career lawyers at the Department of Justice have analyzed state voter ID laws for preclearance, most recently in 2005, in relation to a change to Georgia's voter ID law. The Section 5 preclearance review analyzed Georgia's elimination of twelve forms of identification previously accepted, reducing the acceptable forms of ID to six, all of which were photo IDs. In addition, Georgia eliminated the fail-safe option for voters who could not produce acceptable photo IDs.

Career lawyers in the Civil Rights Division concluded in an August 25, 2005, memorandum that the State of Georgia failed to meet its burden under Section 5. The career lawyers' memorandum explained that what was necessary—and what the Georgia law lacked—was a wide range of acceptable forms of identification as well as “fail-safe” options for those voters who lack an acceptable ID.

With respect to preclearance of a voter identification law enacted by the State of Texas, will you pledge to follow the advice and established practice of career lawyers as embodied in that August 25, 2005, memorandum? In other words, assuming the Texas statute is otherwise similar to the Indiana and Georgia statutes, will preclearance turn on (1) the number and type of available

identification documents, and (2) the existence of a so-called “fail-safe” option like a provisional ballot.

Answer: The Supreme Court in *Crawford* recognized that preventing voter fraud is an important government interest. It is clear from the *Crawford* case and the Georgia voter ID case that the legality of voter identification laws has to be analyzed on a case-by-case basis. Because the Texas proposal may become a matter that the Civil Rights Division may have to review pursuant to the preclearance requirements of Section 5 of the Voting Rights Act, it would be inappropriate for me to comment on this particular matter at this time. As with all Section 5 submissions, if confirmed, I will conduct a thorough and prompt review of the submissions, and will seek the views of the relevant career staff within the Voting Section of the Civil Rights Division.