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August 29, 2018

VIA EMAIL

Members of the Texas Sunset Advisory Commission
Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711
sunset@sunset.texas.gov

RE: Proposed Closure of 87 Department of Public Safety Offices

Dear Members of the Texas Sunset Advisory Commission:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) and Texas Civil Rights Project write because we are concerned about the Texas Sunset Advisory Commission’s (“Commission”) recommendation to close 87 Department of Public Safety (DPS) offices. As you are well aware, these offices issue driver licenses and other identification and provide opportunities for eligible voters to register and update their voter registration information, across the state.¹ This decision has the potential to negatively impact low-income, elderly, voters of color, and other Texans who use these offices to obtain identification to vote in Texas under the state’s photo identification (photo ID) law and to register to vote, which is required by the National Voter Registration Act.² Decisions that impact the fundamental right to vote must be considered, analyzed, and reviewed scrupulously.

In the case of this proposal, it is not clear that the reported financial savings to the state justify the significant infringement on the ability of Texas residents to vote that these closures may

¹ An appendix to this letter includes brief descriptions about the work of LDF and the Texas Civil Rights Project, particularly related to their respective efforts to ensure robust and equal opportunities for political participation in Texas.

² See Texas Senate Bill 5, Act of June 1, 2017, 85th Leg., R.S., 2017 Tex. Sess. Laws. ch. 410; see also 52 U.S.C. § 20504.



cause.³ We ask you to thoroughly consider the potential impact on the ability to vote that your decision will have on eligible voters in Texas who, likely lack the transportation, documents, and other resources necessary to register to vote and cast a ballot without access to *any* driver license office in their county.

While reportedly the Sunset Commission has calculated the fiscal savings of closing the DPS offices to be approximately \$800,000, we are alarmed that to date there has been no publicly available analysis of the impact on voters, particularly low-income voters, and voters of color, who may rely on these offices to obtain identification to vote or to register to vote and update their voter registration.⁴ It has been widely reported that nearly all of the offices selected for closure (78 of 87) are the *only* DPS offices in their respective counties, and therefore their closures will greatly impact Texans’ ability to access a driver’s licenses or other IDs that may be used to vote in Texas—or register to vote and keep their voter registration updated, particularly those Texans who do not have access to transportation to travel outside of their home county to access another DPS office.⁵ We urge the State to conduct and make public a deeper analysis of the potential impact of this decision, including explaining: (1) what alternatives have been considered to save costs that will not negatively impact Texans; and (2) what steps Texas will take to mitigate the burden to already marginalized individuals who will be impacted.

³ When considering challenges to state election laws that burden the fundamental right to vote, courts must “weigh ‘the character and magnitude of the asserted injury to the rights ... that the plaintiff seeks to vindicate’ against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

⁴ See, e.g., Molly Smith, *Multiple South Texas DPS offices identified for possible closure*, Monitor (Aug. 24, 2018), https://www.themonitor.com/news/local/article_ab748ecc-a801-11e8-9524-e7024157798e.html

⁵ See, e.g., *DPS May Close 87 Local Driver License Offices*, The Texas Association of Counties (Aug. 22, 2018), <https://www.county.org/News/DPS-May-Close-87-Local-Driver-License-Offices>; James Barragán, *To ease wait times, Texas DPS proposes closing 87 driver’s license offices, including four in D-FW*, Dallas News (Aug. 24, 2018), <https://www.dallasnews.com/news/politics/2018/08/23/four-d-fw-drivers-license-offices-could-close-along-83-others-texas-dps-list>



Currently, it is not evident that Texas will actually save money by closing these offices given the additional costs that will be borne seeking to create new opportunities for voters to access the resources that these DPS offices offer, like access to IDS and opportunities to register to vote and update their voter registration. Indeed, while it is reported that Texas may send mobile units to those counties where the *only* DPS office will be closed, a federal court, in the context of a challenge to S.B. 14, Texas’s 2011 version of its photo ID law, specifically concluded that the mobile EIC units do “not appreciably ameliorate the discriminatory effects or purpose of SB 14 with respect to the obstacles to obtaining qualified photo ID.” *Veasey v. Abbott*, 265 F. Supp. 3d 684, 693 (S.D. Tex. 2017), *rev’d in part*, 888 F.3d 792 (5th Cir. 2018). Specifically, their mobile nature has made them largely ineffective. *See Veasey I*, 71 F. Supp. 3d 627, 679 & n.398, 687 (S.D. Tex. 2014) (finding that mobile EIC provisions are not effective).⁶ We know that based on judicial findings in that case, Black and Latino Texas voters are two to three times less likely to possess the limited forms of ID that SB 14 required and two to three times more likely than Anglo Texas voters to be burdened in getting those IDs. These IDs include those issued by DPS, and SB 5 of 2017, Texas’s newest iteration of its ID law, carries forward the State’s demand for those IDs to vote in-person.

Notably, other jurisdictions have been stopped in their tracks or had their efforts severely curtailed when they have acted to close offices that issue IDs and offer opportunities to register to vote in order to save money. For example, in 2014, Alabama modified its decision to outrightly close 31 of the approximately 75 driver’s licenses offices, many often located in majority-Black counties, that, like DPS offices in Texas, issue the most common forms of photo IDs needed to vote under Alabama law; instead, Alabama limited the operation of those offices.⁷ This partial fix followed an investigation by the U.S. Department of Transportation that “concluded that African Americans residing in the Black Belt region of Alabama are disproportionately underserved by

⁶ LDF is a counsel of record in this active litigation.

⁷ Kyle Whitmire, *As it turns out ...Bentley’s driver’s license closures were racial, after all*, AL.com (Jan. 5, 2017), https://www.al.com/opinion/index.ssf/2017/01/as_it_turns_out_bentleys_drive.html



ALEA’s driver licensing services, causing a disparate and adverse impact on the basis of race” in violation of Title VI of the Civil Rights Act of 1964.⁸

Moreover, as you likely are aware, in 2013, the U.S. Supreme Court’s 2013 decided *Shelby County, Alabama v. Holder* which rendered inoperable Section 5 of the Voting Rights Act and the preclearance process that required Texas and the localities within it to demonstrate to the federal government that a voting change, like a closure of an ID-issuing office, would not worsen the ability of racial minority voters to participate in the political process. Section 5 blocked Michigan from closing a DMV office that issued IDs and provided voter registration services after that state passed a photo ID law.⁹ Though Section 5 no longer affords Texans such a protection, other laws do. For example, Section 2 of the Voting Rights Act prohibits voting standards, practices, or procedures that were either enacted with a racially discriminatory intent, or that have racially discriminatory result.¹⁰ One of the chief purposes of Section 2 is to prohibit practices that directly deny the exercise of the right to vote, as may be the case with racially discriminatory closures of DPS offices. In addition, the Fourteenth and Fifteenth Amendments of the U.S. Constitution provide for the fundamental right to vote and prohibit voting practices adopted with a discriminatory purpose.¹¹

Further, the National Voter Registration Act (“NVRA”) was passed by Congress in 1993 “to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office.” The NVRA requires DPS to provide voter registration application simultaneous with driver licenses transactions.¹² Currently, Texas does not provide voter registration or a chance to update voter registration to Texans who transact with DPS online for their driver license needs. In contrast, applicants are offered voter registration when they interact with DPS in-person at a DPS office. DPS aims to shift driver license transactions from in-person transactions to online. Thus, we are concerned about how those who seek to exercise their right to

⁸ *Id.*; see also Memorandum of Agreement Between the U.S. Department of Transportation and the Alabama Law Enforcement Agency, at 1 (2016), available at https://www.transportation.gov/sites/dot.gov/files/docs/ALEA%20US%20DOT%20Signed%20MOA_0.PDF

⁹ Ltr. to Mr. Brian DeBano, Chief of Staff and Chief Operating Officer, et al. from Grace Chung Becker, Acting Assistant Attorney General, U.S. Department of Justice (Dec. 26, 2007), https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/l_071226.pdf

¹⁰ See 52 U.S.C. § 10301.

¹¹ U.S. Const. amends. XIV & XV.

¹² 52 U.S.C. § 20504.



register to vote (an update their voter registrations) with DPS will be able to do so under the proposal to close 87 DPS offices that the Commission has recommended.

Our democracy depends on free and open access to the sacred right to vote. Even the perception of an unfair and racially discriminatory infringement of that right undermines the legitimacy of our political system. The construction of this additional barrier in the pathway to voting for already marginalized voters cannot be abided, particularly with little meaningful opportunity for Texas residents to voice their concerns and offer alternatives. We urge you to reconsider this recommendation, after conducting a thorough review and analysis of the impact of these closures on various communities in Texas, as well as providing opportunities for an open and transparent review and consideration process that allows for meaningful public input on this important proposal.

We welcome the opportunity to discuss our concerns further. If you have any questions, please contact Leah Aden at 212-965-7715 or Beth Stevens at 361-437-9081.

Sincerely,

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Cc (by email): The Honorable Rolando Pablos, Texas Secretary of State
Steven C. McCraw, Director, Texas Department of Public Safety



Appendix

Since its founding in 1940, the **NAACP Legal Defense & Educational Fund, Inc. (LDF)** has been a pioneer in the struggle to secure and protect the civil rights of Black people and other people of color in Texas and elsewhere by using legal and legislative advocacy and public education strategies. LDF has been involved in much of the precedent-setting litigation related to securing the civil rights of people of color in Texas and elsewhere. *See, e.g., Fisher v. University of Texas at Austin*, 136 S. Ct. 2198 (2016) (LDF as amicus in the successful defense of affirmative action at the University of Texas-Austin); *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016) (LDF as amicus in the successful defense of the one-person-one-vote principle); *Buck v. Davis*, 137 S. Ct. 759 (2017) (LDF successfully challenging capital sentence where prisoner was prejudiced by defense counsel presenting expert testimony that prisoner was statistically more likely to act violently in the future because he was black); *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc), *cert. denied*, 137 S. Ct. 612 (2017) (LDF successfully challenging Texas's photo ID law under the Voting Rights Act). LDF has been a separate entity from the NAACP, and it state branches, since 1957.

Texas lawyers for Texas communities, the **Texas Civil Rights Project (TCRP)** serves the movement for equality and justice in and out of the courts. In our 28-year history, TCRP has brought thousands of strategic lawsuits to protect and expand voting rights, reform our broken criminal justice system, and advance racial and economic justice. We use legal advocacy and litigation to protect and advance the civil rights of everyone in Texas, particularly our State's most vulnerable populations, and to effect positive and lasting change to law and policy. We believe that by serving the rising social justice movement in Texas with legal representation and creative strategies, we can work with our allies to give voice to and build power within historically excluded and under-represented communities.