TRANSCRIPT OF PROCEEDINGS BEFORE
THE SENATE OF THE STATE OF TEXAS
EIGHTY-FIRST LEGISLATURE
(COMMITTEE OF THE WHOLE SENATE)
AUSTIN, TEXAS

IN RE: §
CONSIDERATION OF §
SENATE BILL 362 §

COMMITTEE OF THE WHOLE SENATE
TUESDAY, MARCH 10, 2009

BE IT REMEMBERED THAT AT 12:38 p.m., on Tuesday, the 10th day of March 2009, the above-entitled matter was heard at the Texas State Capitol Senate Chamber, Austin, Texas, before the Committee of the Whole Senate; and the following proceedings were reported by Aloma J. Kennedy, a Certified Shorthand Reporter of:

VOLUME 1A PAGES 1 - 208

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ORIGINAL
# TABLE OF CONTENTS

## VOLUME 1A

| PROCEEDINGS, TUESDAY, MARCH 10, 2009 | 2 |
| ROLL CALL NO. 1 | 2 |
| OPENING INSTRUCTIONS BY SEN. DUNCAN | 5 |
| OBJECTION TO FURTHER CONSIDERATION OF SB 362 (SEN. WEST) | 12 |
| ROLL CALL NO. 2 | 38 |
| LAYING OUT OF SENATE BILL 362 (SEN. FRASER) | 44 |
| QUESTIONS FROM SENATE FLOOR | 53 |

## VOLUME 1B

<table>
<thead>
<tr>
<th>INVITED TESTIMONY</th>
<th>210</th>
</tr>
</thead>
<tbody>
<tr>
<td>TESTIMONY BY HANS VON SPAKOVSKY</td>
<td>210</td>
</tr>
<tr>
<td>QUESTIONS FROM SENATE FLOOR</td>
<td>218</td>
</tr>
<tr>
<td>TESTIMONY BY TOVA ANDREA WANG</td>
<td>277</td>
</tr>
<tr>
<td>QUESTIONS FROM SENATE FLOOR</td>
<td>287</td>
</tr>
<tr>
<td>TESTIMONY BY CAMERON QUINN</td>
<td>300</td>
</tr>
<tr>
<td>QUESTIONS FROM SENATE FLOOR</td>
<td>306</td>
</tr>
<tr>
<td>TESTIMONY BY TOBY MOORE</td>
<td>336</td>
</tr>
<tr>
<td>QUESTIONS FROM SENATE FLOOR</td>
<td>344</td>
</tr>
<tr>
<td>TESTIMONY BY FRANK B. STRICKLAND</td>
<td>373</td>
</tr>
<tr>
<td>QUESTIONS FROM SENATE FLOOR</td>
<td>417</td>
</tr>
<tr>
<td>TESTIMONY BY ADAM SKAGGS</td>
<td>408</td>
</tr>
<tr>
<td>QUESTIONS FROM SENATE FLOOR</td>
<td>417</td>
</tr>
<tr>
<td>TESTIMONY OF ROBERT A. SIMMS SUBMITTED BY WES TAILOR</td>
<td>435</td>
</tr>
<tr>
<td>TESTIMONY BY J. GERALD HEBERT</td>
<td>442</td>
</tr>
<tr>
<td>QUESTIONS FROM SENATE FLOOR</td>
<td>450</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

## VOLUME 2

### PROCEEDINGS, WEDNESDAY, MARCH 11, 2009

<table>
<thead>
<tr>
<th>Questions From Senate Floor (Continued)</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Testimony by Thomas Wheeler</td>
<td>502</td>
</tr>
<tr>
<td>Questions from Senate Floor</td>
<td>510</td>
</tr>
<tr>
<td>Testimony by Chandler Davidson</td>
<td>521</td>
</tr>
<tr>
<td>Questions from Senate Floor</td>
<td>527</td>
</tr>
<tr>
<td>Testimony by Ed Johnson</td>
<td>559</td>
</tr>
<tr>
<td>Questions from Senate Floor</td>
<td>566</td>
</tr>
<tr>
<td>Testimony by Daniel B. Kohrman</td>
<td>621</td>
</tr>
<tr>
<td>Questions from Senate Floor</td>
<td>628</td>
</tr>
<tr>
<td>Testimony by Coby Shorter</td>
<td>653</td>
</tr>
<tr>
<td>Questions from Senate Floor</td>
<td>655</td>
</tr>
<tr>
<td>Testimony by Dennis Borel</td>
<td>706</td>
</tr>
<tr>
<td>Questions from Senate Floor</td>
<td>713</td>
</tr>
<tr>
<td>Testimony by Gary Gledsoe</td>
<td>724</td>
</tr>
<tr>
<td>Questions from Senate Floor</td>
<td>731</td>
</tr>
<tr>
<td>Testimony by Eric Nichols</td>
<td>742</td>
</tr>
<tr>
<td>Questions from Senate Floor</td>
<td>750</td>
</tr>
</tbody>
</table>

### Public Testimony

<table>
<thead>
<tr>
<th>Claire Oxley Gluck</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hazel Cotton</td>
<td>773</td>
</tr>
<tr>
<td>Questions from Senate Floor</td>
<td>775</td>
</tr>
<tr>
<td>Kathy Hicks</td>
<td>776</td>
</tr>
<tr>
<td>James E. Carter</td>
<td>779</td>
</tr>
<tr>
<td>Rusty Hicks</td>
<td>781</td>
</tr>
</tbody>
</table>

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TX_00003859  
JA_003282  
USA_00018164
# TABLE OF CONTENTS

PUBLIC TESTIMONY (CONTINUED)

<table>
<thead>
<tr>
<th>Name</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>TINA BENKISER</td>
<td>784</td>
</tr>
<tr>
<td>B.R. SKIPPER WALLACE</td>
<td>787</td>
</tr>
<tr>
<td>ANITA PRIVETT</td>
<td>789</td>
</tr>
<tr>
<td>MARY ANN COLLINS</td>
<td>792</td>
</tr>
<tr>
<td>ROSA ROSALES</td>
<td>794</td>
</tr>
<tr>
<td>QUESTIONS FROM SENATE FLOOR</td>
<td>797</td>
</tr>
<tr>
<td>DUSTIN RYNDERS</td>
<td>800</td>
</tr>
<tr>
<td>MARSHA CORREIRA</td>
<td>803</td>
</tr>
<tr>
<td>QUESTIONS FROM SENATE FLOOR</td>
<td>806</td>
</tr>
<tr>
<td>RENE LARA</td>
<td>807</td>
</tr>
<tr>
<td>LEE MEDLEY</td>
<td>810</td>
</tr>
<tr>
<td>JOHN WATKINS</td>
<td>811</td>
</tr>
<tr>
<td>KENNETH FLIPPEN</td>
<td>813</td>
</tr>
<tr>
<td>ANNIE BANKS</td>
<td>816</td>
</tr>
<tr>
<td>RACHEL HERNANDEZ</td>
<td>817</td>
</tr>
<tr>
<td>RENATO DE LOS SANTOS</td>
<td>819</td>
</tr>
<tr>
<td>JUDY HOLLOWAY</td>
<td>823</td>
</tr>
<tr>
<td>LYDIA CAMARILLO</td>
<td>825</td>
</tr>
<tr>
<td>EDWARD B. WILLIAMS</td>
<td>828</td>
</tr>
<tr>
<td>MADELEINE DEWAR</td>
<td>830</td>
</tr>
<tr>
<td>HELEN VILLARREAL</td>
<td>833</td>
</tr>
<tr>
<td>MARK WILLIAMSON</td>
<td>835</td>
</tr>
<tr>
<td>VANESSA FOSTER</td>
<td>838</td>
</tr>
<tr>
<td>LUIS FIGUERO</td>
<td>840</td>
</tr>
<tr>
<td>QUESTIONS FROM SENATE FLOOR</td>
<td>844</td>
</tr>
<tr>
<td>PATTI EDELMAN</td>
<td>844</td>
</tr>
<tr>
<td>SYLVIA MENDOZA</td>
<td>846</td>
</tr>
<tr>
<td>KENNETH KOYM</td>
<td>848</td>
</tr>
<tr>
<td>KAREN RENICK</td>
<td>850</td>
</tr>
<tr>
<td>JONI ASHBROOK</td>
<td>853</td>
</tr>
<tr>
<td>DUANE RAWSON</td>
<td>856</td>
</tr>
<tr>
<td>ROD FLUKER</td>
<td>858</td>
</tr>
<tr>
<td>ROLL CALL NO. 3</td>
<td>864</td>
</tr>
<tr>
<td>PROCEEDINGS CONCLUDED</td>
<td>869</td>
</tr>
</tbody>
</table>

KENNEDY REPORTING SERVICE, INC.  
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TX_00003860
JA_003283

USA_00018165
<table>
<thead>
<tr>
<th></th>
<th>EXHIBIT INDEX</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1A Sen. Van de Putte 3/3/09 Memo to Sen. Duncan re ground rules for Committee of the Whole Pubic hearing</td>
</tr>
<tr>
<td>2</td>
<td>1B Sen. Duncan 3/5/09 Memo to Sen. Van de Putte re response to concerns about ground rules for the Committee of the Whole Senate</td>
</tr>
<tr>
<td>3</td>
<td>2. Letter to Texas Attorney General Greg Abbott re: Hearing on SB 362, signed by 11 Senators</td>
</tr>
<tr>
<td>4</td>
<td>3. Senate Notice of Public Hearing on SB 362 for 3/10/09</td>
</tr>
<tr>
<td>5</td>
<td>4. Texas Senate Agenda, 3/10/09</td>
</tr>
<tr>
<td>7</td>
<td>5B 3/10/09 Tag Form signed by Sen. Mario Gallegos</td>
</tr>
<tr>
<td>8</td>
<td>6. Roll Call No. 2 - Sen. Gallegos' Appeal of Ruling of Chair on Sen. West's Point of Order</td>
</tr>
<tr>
<td>9</td>
<td>7. Institute of Public Policy Publication entitled &quot;The Effects of Photographic Identification on Voter Turnout in Indiana: A County-Level Analysis&quot; by Jeffrey Milyo, Report 2007</td>
</tr>
</tbody>
</table>

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TX_0003861
JA_003284
EXHIBIT INDEX (continued)

8. AU News publication entitled "Much-hyped Turnout Record Fails to Materialize - Convenience Voting Fails to Boost Balloting" 120 120


10. 9/10/07 Report of the Heritage Center for Data Analysis entitled "New Analysis Shows Voter Identification Laws Do Not Reduce Turnout" by David B. Muhlhausen and Keri Weber Sikich 120 120


13. 2/3/08 article entitled "A Clearer Picture on Voter ID" by Jimmy Carter and James A. Baker III 160 160

<table>
<thead>
<tr>
<th></th>
<th>EXHIBIT INDEX (continued)</th>
<th>MARKED</th>
<th>ADMITTED</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>15A 6/11/07 Letter to Senate Committee on Rules and Administration re Hans A. von Spakovsky nomination</td>
<td>254</td>
<td>254</td>
</tr>
<tr>
<td>4</td>
<td>15B 6/12/07 Article entitled &quot;Obama Raises Concerns Over FEC Nominee's Record of Partisanship&quot;</td>
<td>254</td>
<td>254</td>
</tr>
<tr>
<td>5</td>
<td>15C 10/3/07 Letter to the U.S. Senate from Public Citizen</td>
<td>254</td>
<td>254</td>
</tr>
<tr>
<td>7</td>
<td>17. Testimony of Tova Andrea Wang, Vice President, Research Common Cause, March 10, 2009, re SB 362</td>
<td>300</td>
<td>300</td>
</tr>
</tbody>
</table>
### EXHIBIT INDEX (continued)

MARKED ADMITTED

19. Fifteen letters to the Hon.
    Dianne Feinstein, Chair, and the
    Hon. Robert F. Bennett, ranking
    minority member, U.S. Senate
    Committee on Rules and
    Administration:

1. 6/29/07 letter from Hans
    A. von Spakovsky
2. 3/22/07 letter from various
    members of Congress
3. 3/13/07 letter from William
    H. Jordan
4. 2/08/07 letter from Gary J.
    Smith
5. 2/26/07 letter from P. K.
    Brunelli
6. 3/01/07 letter from J. A.
    Borras
7. 2/21/07 letter from Trey
    Grayson
8. 2/20/07 letter from Beverly
    B. Kaufman
9. 2/19/07 letter from Todd
    Rokita
10. 2/16/07 letter from Frank
    B. Strickland
11. 2/14/07 letter from Tom Lowe
12. 2/13/07 letter from
    T. Rogers Wade
13. 2/14/06 letter from Johnny
    Isakson
14. 2/09/07 letter from Wesley
    R. Kliner, Jr.
15. 3/13/07 letter from Ray
    Martinez III

20. Brennan Center For Justice letter
    dated October 3, 2007, by
    Executive Director Michael
    Waldman, with attachments

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<table>
<thead>
<tr>
<th>#</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>21</td>
<td>Prepared Remarks of Dr. Toby Moore, Research Triangle, regarding &quot;Evidence of the impact of voter ID requirements and the prospects of US DOJ preclearance,&quot; March 10, 2009</td>
</tr>
<tr>
<td>22</td>
<td>Harris County Map submitted by Sen. Gallegos</td>
</tr>
<tr>
<td>23</td>
<td>Testimony of Frank B. Strickland re SB 362, March 10, 2009</td>
</tr>
<tr>
<td>24</td>
<td>Testimony of Adam Skaggs, Counsel, Democracy Program, Brennan Center for Justice at NYU School of Law, regarding The Myth of Voter Impersonation Fraud at the Polls, March 10, 2009</td>
</tr>
<tr>
<td>25</td>
<td>Written Testimony of Robert A. Simms, Georgia Deputy Secretary of State, presented to the United States Senate Committee on Rules and Administration, submitted by Wes Tailor</td>
</tr>
<tr>
<td>26</td>
<td>Testimony of J. Gerald Hebert re SB 362, March 10, 2009</td>
</tr>
<tr>
<td>27</td>
<td>Letter from Rene Guerra (March 6, 2009) Criminal District Attorney of Hidalgo County, Submitted by Sen. Lucio</td>
</tr>
<tr>
<td>28</td>
<td>3/4/09 Letter from Todd Rokita, Indiana Secretary of State, to Sen. Fraser re SB 362</td>
</tr>
</tbody>
</table>
## EXHIBIT INDEX (continued)

<table>
<thead>
<tr>
<th></th>
<th>MARKED</th>
<th>ADMITTED</th>
</tr>
</thead>
<tbody>
<tr>
<td>29.</td>
<td>Testimony of Chandler Davidson, Tsanoff Professor of Public Affairs Emeritus, Rice University, regarding &quot;The Historical Context of Senate Bill 362,&quot; March 10, 2009</td>
<td>521</td>
</tr>
<tr>
<td>31.</td>
<td>Dashwood case documents submitted by Ed Johnson, Harris County Tax Assessor-Collector and Voter Registrar's Office</td>
<td>559</td>
</tr>
<tr>
<td>32.</td>
<td>Records from specific Harris County voting documents, submitted by Ed Johnson</td>
<td>559</td>
</tr>
<tr>
<td>33.</td>
<td>Harris County Deceased Voting History, miscellaneous registration applications, submitted by Ed Johnson</td>
<td>559</td>
</tr>
<tr>
<td>34.</td>
<td>Texas Voter Registration Application form submitted by Sen. Huffman</td>
<td>570</td>
</tr>
<tr>
<td>35.</td>
<td>Testimony of Daniel B. Kohrman, Senior Attorney, AARP Foundation, re SB 362 March 10, 2009</td>
<td>621</td>
</tr>
<tr>
<td>36.</td>
<td>Photographs of Voter Education, Anderson County Workshop, 2008</td>
<td>724</td>
</tr>
<tr>
<td>37.</td>
<td>Testimony of Gary L. Bledsoe, President, Texas NAACP, re SB 362, March 10, 2009</td>
<td>724</td>
</tr>
</tbody>
</table>
### EXHIBIT INDEX (continued)

<table>
<thead>
<tr>
<th>Marked</th>
<th>Admitted</th>
</tr>
</thead>
<tbody>
<tr>
<td>38. Number of voters who have registered since 2006 without a driver's license number, submitted by Sen. Watson</td>
<td>767</td>
</tr>
<tr>
<td>39. The Special Investigations Unit Role and Investigative Efforts and Funding, submitted by Sen. Huffman</td>
<td>767</td>
</tr>
<tr>
<td>40. Slip Opinion, U.S. Supreme Court, Crawford vs. Marion County Election Board, October Term, 2007</td>
<td>768</td>
</tr>
<tr>
<td>41. U.S. Supreme Court, Crawford vs. Marion County Election Board, on Writ of Certiorari to U.S. Court of Appeals for the Seventh Circuit, Brief of Texas, Alabama, Colorado, Florida, Hawaii, Michigan, Nebraska, Puerto Rico and South Dakota, as Amici Curiae Supporting Respondents</td>
<td>768</td>
</tr>
<tr>
<td>42. Written Testimony of Claire Oxley Gluck from Boerne, in Kendall County, re SB 362</td>
<td>773</td>
</tr>
<tr>
<td>43. Written Testimony of Hazel Cotton of Texarkana, Texas re SB 362</td>
<td>775</td>
</tr>
<tr>
<td>44. Written Testimony of Kathy Hicks of Texarkana, Texas re SB 362</td>
<td>779</td>
</tr>
<tr>
<td>45. Written Testimony of Donald Giles of Texarkana, Texas re SB 362</td>
<td>783</td>
</tr>
<tr>
<td>46. Written Testimony of Anita Privett, League of Women Voters of Texas, re SB 362</td>
<td>789</td>
</tr>
<tr>
<td></td>
<td>EXHIBIT INDEX (continued)</td>
</tr>
<tr>
<td>---</td>
<td>----------------------------</td>
</tr>
<tr>
<td>47.</td>
<td>Written Testimony of Rosa Rosales, League of United Latin American Citizens, National President re SB 362</td>
</tr>
<tr>
<td>48.</td>
<td>Written Testimony of Dustin Rynders, Advocacy, Inc., re SB 362</td>
</tr>
<tr>
<td>49.</td>
<td>Written Testimony of Marsha Correira re SB 362</td>
</tr>
<tr>
<td>50.</td>
<td>Written Testimony of Rachel A. Hernandez re SB 362</td>
</tr>
<tr>
<td>51.</td>
<td>10/17/08 Article by Nelda Wells Spears, Voter Registrar, Travis County, entitled &quot;40,000 Voter Registration Applications Processed in Time For Early Voting&quot;</td>
</tr>
<tr>
<td>52.</td>
<td>Written Testimony of Lydia Camarillo, SVREP Vice President, re SB 362</td>
</tr>
<tr>
<td>53.</td>
<td>Written Testimony of Luis Figueroa, Mexican American Legal Defense and Education Fund (MALDEF), re SB 362</td>
</tr>
<tr>
<td>54.</td>
<td>Written Testimony of Sylvia Mendoza re SB 362</td>
</tr>
<tr>
<td>55.</td>
<td>Written Testimony of Dr. Rod Fluker, Sr., Executive Director for Texas Association of Black Personnel in Higher Education, re SB 362</td>
</tr>
</tbody>
</table>
PROCEDINGS
TUESDAY, MARCH 10, 2009

(12:38 p.m.)

PRESIDENT DEWHURST: Members, the Senate will come to order. Pursuant to a resolution previously adopted, the Senate resolves itself into the Committee of the Whole for the consideration of Senate Bill 362. The senator from Lubbock, Sen. Duncan, will please take the chair for the duration of the proceedings in the Committee of the Whole.

(Off the record: 12:38 p.m. to 12:42 p.m.)

SEN. DUNCAN: The Committee of the Whole Senate will come to order. The secretary will call the roll.

ROLL CALL NO. 1

SECRETARY SPAW: Averitt?

SEN. AVERITT: (Indicated presence)

SECRETARY SPAW: Carona?

SEN. CARONA: (Indicated presence)

SECRETARY SPAW: Davis?

SEN. DAVIS: (Indicated presence)

SECRETARY SPAW: Deuell?

SEN. DEUELL: (Indicated presence)
SECRETARY SPAW: Duncan?
SEN. DUNCAN: (Indicated presence)
SECRETARY SPAW: Ellis?
SEN. ELLIS: (Indicated presence)
SECRETARY SPAW: Eltife?
SEN. ELTIFE: (Indicated presence)
SECRETARY SPAW: Estes?
SEN. ESTES: (Indicated presence)
SECRETARY SPAW: Fraser?
SEN. FRASER: Here.
SECRETARY SPAW: Gallegos?
SEN. GALLEGOS: (Indicated presence)
SECRETARY SPAW: Harris?
SEN. HARRIS: (Indicated presence)
SECRETARY SPAW: Hegar?
SEN. HEGAR: (Indicated presence)
SECRETARY SPAW: Hinojosa?
SEN. HINOJOSA: (Indicated presence)
SECRETARY SPAW: Huffman?
SEN. HUFFMAN: (Indicated presence)
SECRETARY SPAW: Jackson?
SEN. JACKSON: (Indicated presence)
SECRETARY SPAW: Lucio?
SEN. LUCIO: (Indicated presence)
SECRETARY SPAW: Nelson?
SEN. NELSON: (Indicated presence)
SECRETARY SPAW: Nichols?
SEN. NICHOLS: (Indicated presence)
SECRETARY SPAW: Ogden?
SEN. OGDEN: (Indicated presence)
SECRETARY SPAW: Patrick?
SEN. PATRICK: (Indicated presence)
SECRETARY SPAW: Seliger?
SEN. SELIGER: Here.
SECRETARY SPAW: Shapiro?
SEN. SHAPIRO: (Indicated presence)
SECRETARY SPAW: Shapleigh?
SEN. SHAPLEIGH: (Indicated presence)
SECRETARY SPAW: Uresti?
SEN. URESTI: (Indicated presence)
SECRETARY SPAW: Van de Putte?
SEN. VAN de PUTTE: (Indicated presence)
SECRETARY SPAW: Watson?
SEN. WATSON: (Indicated presence)
SECRETARY SPAW: Wentworth?
SEN. WENTWORTH: Here.
SECRETARY SPAW: West?
SEN. WEST: (Indicated presence)
SECRETARY SPAW: Whitmire?
SEN. WHITMIRE: (Indicated presence)
SECRETARY SPAW: Williams?

SEN. WILLIAMS: (Indicated presence)

SECRETARY SPAW: Zaffirini?

SEN. ZAFFIRINI: (Indicated presence)

SEN. DUNCAN: The Chair present.

SECRETARY SPAW: Mr. President?

PRESIDENT DEWHURST: (Indicated presence)

SEN. DUNCAN: A quorum is present.

OPENING INSTRUCTIONS BY SEN. DUNCAN

SEN. DUNCAN: Members, before we get started, I wanted to kind of briefly discuss how we will proceed here. And I think you all know the resolution gives the Chair the power to allow time limits. Many of you have wanted to bring and begin with invited testimony, and those would be persons with expertise that can help the body understand the issues involved in the legislation that we are about to consider, and that will be honored. Each side has submitted a list of witnesses, and I assume the order of those witnesses is available to us at this time.

After the author of the bill is recognized to lay out the bill, then I will recognize the proponents' first witness, their expert in support of their bill. And then after that, we will go in
alternating order so that those who are in opposition to the bill, if they want to bring witness
expert or invited witness in, then we would go in that order.

So, in other words, we'll have one for and one against, one for and one against as we go
through. There are several of those witnesses. I believe there are eight witnesses that have been
identified by those in opposition to the bill, and there are about seven that have been identified for
those in favor of the bill. So we will move that on.

The Chair will impose on each one of those witnesses a 10-minute time limit. However, Sen.
Van de Putte indicates that they have one witness that may take longer than that. And if you'll approach the
bench before, or the dais before that person comes on, Sen. Van de Putte, we will adjust that time limit to
accommodate the concerns that you raised.

Members, I'm going to refrain from recognizing any member to interrupt a witness during
their initial time limit. In other words, we will allow the witnesses to complete their testimony, and
then you can ask questions after that. You will be recognized in order of your pressing your call button
on your desk.
And I will remind each and every one of you, we have a number of guests who are here today, or members of the public who wish to testify as well, and they have been here since about 8 o'clock in the morning and they would like to testify on this bill. And so what we are trying to do is accommodate their interest as well.

I know that you all have important questions to ask of the invited witnesses, but I would ask you to keep in mind that we have members of the public who have also traveled here from other cities and other areas of the state that would like to have their voices heard today as well. So if we could respect that as well.

Once we conclude with the invited testimony, then we will start the process for public testimony. The Chair intends to impose a three-minute time limit on public testimony. As with invited witnesses, the Chair will not entertain any questions of the witness until they have completed their three-minute testimony or concluded prior to the three minutes.

As the persons have enrolled to testify, the resolution requires -- and I think our rules have always required -- that before a witness can testify,
they sign an affirmation that is more or less an oath, or is an oath before they testify. Persons who have been filling out their cards have been doing that all day long, and we have a procedure in there for them to sign up to testify.

It's my understanding that the Secretary of the Senate has done a nice job of preparing instructions for them on how the process will work. And they have been given written instructions on how they will be called. It is the Chair's intention to call the witnesses in the order in which they arrived and registered to be witnesses today. Each one of those cards was given a number, and those witnesses will be called in order.

And there is always a problem with witnesses who are not available at the time they're called. We will have witnesses hopefully in the gallery. The gallery is not full. So if you know you're going to testify and your number is fairly close, you should be in the gallery. We also have an overflow room in the auditorium. Everybody has been instructed as to that. It's the Chair's intention to call witnesses in advance of their being on the floor, and they are to report in the back hallway. And then there is a process for security and a process for
admitting them to the floor.

We will have them come through here and give us testimony in an orderly fashion. And if someone does not arrive at the time their name is called or within 30 minutes of their name -- let me repeat that and be clear. If a witness does not arrive within 30 minutes of the time their name will be called, then they will lose their opportunity to testify. So we're going to try to be very flexible in trying to allow people time to get here. But we need to be able to stay on schedule and move -- and respect every other witness' right to be heard.

Time limits are -- I think all of our committees observe time limits. At least the ones that I serve on do. And time limits are not designed to limit the testimony that witnesses have to say; it's designed to allow everyone who has presented to testify, if possible. And so what I'm concerned about, in putting a time limit in, is that people understand that your time limit is based on the fact that there are many people that want to testify, and so we need to allow them to have their opportunity as well.

Finally, we had a little discussion about this in the discussion on the resolution when we
were in session. The rules of decorum of the Senate will be enforced. And that means for those in the gallery, that we -- the rules of the Texas Senate do not permit clapping or applause, when we're in a deliberative session like this, do not permit clapping, applause or demonstrations. There may be times when you wish to be excited about something you agree with or disagree with, but it is inappropriate in the Senate chamber to express that. There will be no placards or billboards or things dropped over the rail. Any of that will subject the person doing it to being expelled from the Senate gallery.

And I'm sure it won't come to this, but if it comes to this, it comes to a point in time to where, after warning, the gallery generally is not observing the rules of the Senate with regard to decorum, well, then, the Chair would entertain a motion at that time or may, on sua sponte, request that the gallery be cleared. The only reason I say that is, is that the decorum and the ability to hear witnesses and to deliberate in a professional way on this is very important. And those rules were designed to allow us to do that, and they will be enforced.

So those in the gallery and those watching on TV, please understand that. I would hate
to have to make a ruling or to have anyone removed from the gallery, but we will need to do that if it gets out of hand.

I need to clarify that the witnesses should report to the front of the chambers. And I always am confused about east, west, south, north or front or back. But the front of the Senate chambers, that would be the west doors next to the witness registration desk, and that would be the door that's closest to the rotunda in our Texas Senate.

Members, I want to introduce to you today our court reporter, Aloma J. Kennedy of Kennedy Reporting Service. She is an independent certified shorthand court reporter, and she will be taking down the testimony today. So it will be necessary for either me or you to identify yourself in the record whenever you speak or rise to testify or rise to ask a question.

I'll probably just recognize you by name, and the court reporter will get that. Because the court reporter is a human being, we will need to take a rest every now and then for her to rest her fingers and arms, because she has a hard job. Normally with a court reporter, every hour and a half to two hours, and I'll let her kind of give me a
signal whenever she is ready to take a five-minute break.

Members, that's more or less the -- those are the issues and those are kind of the way we're going to run things. So having explained that, the Chair lays out Senate Bill 362 and recognizes Sen. Fraser to explain the bill.

**OBJECTION TO FURTHER CONSIDERATION OF SB 362**

SEN. WEST: Mr. Chairman?

SEN. DUNCAN: Sen. West, for what purpose?

SEN. WEST: Objection on further consideration -- any consideration of Senate Bill 362 in that it violates Rule 11.18 and also would raise Rule 11.10. Rule 11.18 is, "No bill may be reported to the Senate before it has been the subject of an open public hearing before a committee or subcommittee."

My specific objection deals with the notice. "Notice of the hearing on the bill must be posted in a public place at least 24 hours before the hearing is to begin." The posting of notice on this particular bill was at 6:22 p.m. on March the 9th; therefore, any consideration before that would be in violation of that rule.
SEN. DUNCAN: Sen. West, bring your point of order forward.

(Off the record: 12:55 p.m. to 12:58 p.m.)

SEN. WEST: Mr. Chairman?

SEN. DUNCAN: Sen. West, for what purpose?

SEN. WEST: Mr. Chairman, for further clarification on my point of order for further consideration of this bill at this time, I would raise Rule 13.04. 13.04 governs the procedure in a committee of the whole: "The rules of the Senate, as far as applicable, shall be observed in Committee of the Whole Senate."

And then I would raise our Rule No. 11.18 as relates to the posting of the bill being at least 24 hours before the hearing is to begin. And specifically the notice of the hearing must be posted in a public place.

And then also I would raise Rule 11.10 in terms of the, "No committee or subcommittee, except a conference committee, shall meet at least without 24 hours public notice."

(Off the record: 12:58 p.m. to 1:14 p.m.)
SEN. DUNCAN: Members, a point of order has been raised. Rules 11.10 and 11.18 do not control meetings of the Committee of the Whole and are inapplicable. 13.01 reflects the Senate's manifest right to resolve itself into committee of the whole at any time after the morning call. The Senate has resolved into the Committee of the Whole by Senate resolution. The Chair may neither call a meeting of the Committee of the Whole or schedule a bill for hearing.

Article XI, standing and special committees operate without direct day-to-day supervision of the Senate. Standing and special committees have the ability to meet, subject to the call of the chair so long as the Senate is not meeting.

Committee of the Whole presents the obverse situation to standing and special committees. The tag rule is intended to give each member 48-hour written notice of the time and place of a public hearing of standing and special committees. The rules directly conflict with Rule 13.01 and the Senate's right to resolve into the committee of the Whole at a moment's notice if the Senate so desires. Every member of the Senate is a member of the Committee of
the Whole, having equal rights of notice and participation.

Your point of order is respectfully overruled.

SEN. WEST: Mr. Chairman?

SEN. DUNCAN: Sen. West, for what --

SEN. WEST: Parliamentary inquiry. So that I can understand this, under Rule 13.04, it says that, "The rules of the Senate, as far as applicable, shall be observed in the Committee of the Whole . . ." So by your very ruling, you're saying that the posting notice to the public is a rule that the Committee of the Whole does not have to abide by?

SEN. DUNCAN: Senator, that would conflict with the ability in the rules of the Senate to resolve into a committee of the whole at any time it desires. So in its conflict, it would be inapplicable.

SEN. WEST: So public notice does not apply to the Committee of the Whole, even though we are taking substantive testimony on this issue?

SEN. DUNCAN: Public notice laid out by the rules that you have cited does not.

SEN. WEST: Okay. So for future generations of legislators, specifically the Senate,
posting notice does not apply to the Committee of the Whole? That's essentially the ruling? Let me ask this question: Once . . .

SEN. DUNCAN: Go ahead, Senator.

SEN. WEST: You have cited Rule 13.01 that talks about resolving. Is resolving synonymous with hearing a bill?

SEN. DUNCAN: Senator, the Senate can resolve for whatever purpose it desires.

SEN. WEST: Right. And the question is, you cited in your ruling that 13.01 provides the basis for your ruling. And as I understand it, resolving is coming into the Committee of the Whole, hearing a bill that's separate from resolving. It's a separate act than just resolving.

SEN. DUNCAN: Well, Senator, we can resolve for any purpose, and the purpose was to hear the bill. Moreover -- and I will remind you that a courtesy posting on the date, time and location of the hearing was performed over a week ago, which is well in advance of any public notice that would be required of a standing committee. And so the only change that you have referred to was a courtesy posting that was done yesterday with regard to the change of time that occurred whenever there was a motion to adjourn until
10:00 instead of 9:00, and so we're talking about an hour's difference here. So, again, I think that we have resolved by resolution of the Senate to deal with this. The Senate certainly was in session pursuant to the constitution and the rules of the Senate.

SEN. WEST: Yes, sir, Mr. Chairman. But the broader question, though, is one of resolving and hearing the bills and whether or not public notice of bills that are to be considered by the Committee of the Whole are required by the Senate rules.

I mean, essentially you're saying that the Committee of the Whole, by your ruling, that we don't have to provide the public notice, there is no -- we don't have to deal with transparency as relates to considering bills in this committee, we can just do it at our own whim, and that's inconsistent with everything we've been doing in this body in terms of transparency. If I'm wrong about it -- I just want to make sure the record is clear.

And historically, Mr. Chairman, when we have had bills in the Committee of the Whole, we have provided notice to the public so that the public could be here like they are now. And what I'm hearing today is, is that that notice provision is not applicable anymore as a result of the ruling of the Chair. I
mean, correct me if I'm wrong.

SEN. DUNCAN: Senator, we are resolved
into a Committee of the Whole by the resolution we
adopted which laid out the bill that was to be
considered. As a result, we thought we were following
the rules by resolving into a Committee of the Whole
which would apply at any time we so desire; therefore,
the rules that you're citing to would conflict with
the ability of the Senate to freely resolve into a
Committee of the Whole to more informally discuss and
debate witnesses -- or the issues, including the
invitation of witnesses to come in and testify, as we
have done here.

SEN. WEST: Does it also conflict with
Rule 13.04?

SEN. DUNCAN: Senator, 13.04 provides
the -- it provides for the conflicts that may occur
with the concept of committee of the whole and other
rules, by saying that the rules of the Senate apply,
if applicable. And if they conflict -- where they
conflict, those rules wouldn't apply.

SEN. WEST: And this is my last
question. So you're saying that the notice provision,
the notice to the public concerning legislation at the
Committee of the Whole will take up conflicts, with
the Committee of the Whole's right to resolve?

SEN. DUNCAN: Senator, the way the Committee of the Whole operates and the design of that from time immemorial would -- giving the Senate the ability to resolve into itself as a Committee of the Whole to informally debate an issue at any time it desires would conflict with those posting rules.

SEN. WEST: Thank you, Mr. Chairman.

SEN. SHAPLEIGH: Mr. Chairman?

SEN. DUNCAN: Sen. Shapleigh, for what purpose?

SEN. SHAPLEIGH: During the Senate portion of this, before we got into committee, we had a discussion there about some housekeeping matters that I think we need to make very clear for this record. This portion is being kept for the official record by a stenographer hired by the Senate. Is that correct?

SEN. DUNCAN: That's correct.

SEN. SHAPLEIGH: And for the purposes of the official record, should it be transmitted to any third party, we have agreed that the stenographer's record may be utilized?

SEN. DUNCAN: I'm not sure I understand your question. Would you repeat it?
SEN. SHAPLEIGH: If we have to establish the official proceedings of what's happened here today for, for example, the Department of Justice in Washington, D.C., the record that is being made by the stenographer whose equipment is there and who sits in Patsy Spaw's office can be used to establish that record?

SEN. DUNCAN: Senator, it's my understanding that this will be a record that can be used to establish the record of the testimony that is given to the Senate, and the debate.

SEN. SHAPLEIGH: Now, for the purposes of making sure that we have the record to send, I would like to talk a little bit about the procedure for the Secretary of the Senate to take documents and keep them to append to the record. We've had discussions already about several documents, the letters to and from Sen. Van de Putte and yourself, the letter to AG Abbott, the notice of the posting that Sen. West was talking about, and this green Texas Senate agenda. Am I to understand that if we want these made a part of the record, we can deposit them with the Secretary of the Senate?

SEN. DUNCAN: I would suggest that you do that, but I would also suggest that you identify
and just move to put them into the record so that you
have a clear marker of where they are and at what time
they came in so that whoever is reading the record
will have an opportunity to relate the documents to
the testimony.

SEN. SHAPLEIGH: Well, at this time I
would like to, with your permission, mark and deliver
to her Exhibits 1A and B, Sen. Van de Putte's letter
to you and your response to her; as Exhibit 2, her
letter to AG Abbott; as Exhibit 3, the notice of the
posting time that Sen. West has talked about; as
Exhibit 4, the Senate agenda that was distributed
today; and Exhibit 5, the signed tag that brought this
point of order to the Chair.

SEN. DUNCAN: Your evidence is received.
(Exhibit Nos. 1 through 5 marked and
admitted)

SEN. DUNCAN: And it may be that what we
would do is just keep a numerical order of those
exhibits when they come in. But I put the challenge
on you to make sure that you get them marked and
submitted to the Secretary so they get into the record
appropriately.

SEN. SHAPLEIGH: Thank you.

SEN. DUNCAN: Sen. Gallegos, for what
Case 1:12-cv-00128-RMC-DST-RLW Document 210-1 Filed 06/20/12 Page 36 of 248

SEN. GALLEGOS: Parliamentary inquiry.

Mr. Chairman, in lieu -- on the ruling on
Sen. West's -- what he asked for, I want to appeal the
ruling of the Chair on this issue.

SEN. WILLIAMS: Mr. President?

SEN. DUNCAN: Sen. Williams of Harris --
or Montgomery, rather.

SEN. WILLIAMS: I would move to table
the motion that Sen. Gallegos just made.

SEN. DUNCAN: Sen. Williams,

Sen. Gallegos.

(Off-the-record discussion at the bench)

SEN. WILLIAMS: Mr. Chairman -- or
Mr. President -- or Mr. Chairman, I guess I should
say.

SEN. DUNCAN: Sen. Williams.

SEN. WILLIAMS: Mr. Chairman, I
respectfully will withdraw my motion to table. As I
understand, it's not appropriate to have a motion to
table an appeal to the ruling of the chair in
committee. However, I also believe that the rules
provide that that motion would be in order were we on
the floor. So it's my mistake. I withdraw my motion.

SEN. DUNCAN: Sen. Williams withdraws
his motion to table. Sen. Gallegos sends up an appeal
to the ruling of the Chair.

Sen. West, for what purpose?

SEN. WEST: Out of all due respect,
Mr. Chairman, I'm trying to figure out what rules
apply and what rules don't. And if we could just get
some idea of what Senate rules are going to apply and
then, you know, all of us will know exactly what the
rules are.

So I just need to know what rules apply.
I thought the Senate rules applied. But again,
there's some wiggle room in there, and I just want to
know how to proceed. As an example, the Attorney
General -- well, I'll come back to that. But again, I
just need to know what rules apply as it relates to --
you know, we can do anything we want to do, we can
resolve and pretty much do what we want to do. I'm
trying to figure out why his motion wouldn't be
honored.

SEN. DUNCAN: Senator, currently we are
in the motion of -- Sen. Gallegos has a motion to
appeal before the body. You have a parliamentary
inquiry. Why don't we handle that as those issues
come up. Let's go ahead and deal with the appeal of
the ruling of the Chair that has been raised by
Sen. Gallegos.

Sen. Gallegos, you're recognized to speak on that.

(Brief pause)

SEN. WENTWORTH: Sen. Gallegos, you're recognized to argue in favor of your motion.

SEN. GALLEGOS: Mr. Chairman, the reason for my appeal is that evidently the rules are unclear on what rules that we're going by on major legislation, I think and I believe that the Senate rule should be applicable to major legislation, such as the bill that is trying to be laid out before us, that any major piece of legislation under the Senate rules, the ones that Sen. Royce West said. And I've got another tag on similar rules, that I believe that the Senate rules are applicable to major legislation that's heard on this floor, whether it be Committee of the Whole or regular Senate committee hearings.

And that is why, you know, until we find out what rules that we're working on, I believe that the rules of the Senate should be applicable to this bill here, and that's why I'm appealing the ruling of the Chair.

SEN. WENTWORTH: Okay. Members, a motion -- I'm sorry. The Chair recognizes Sen.
SEN. WILLIAMS: Mr. Chairman, I would like to speak on Sen. Gallegos' motion that's before us.

SEN. WENTWORTH: You're recognized.

SEN. WILLIAMS: Thank you.

Respectfully, Sen. Gallegos, I would encourage you to read the rules that we have on the Committee of the Whole. And before I made this rule change at the beginning of the session, I very carefully looked at the rules of the Committee of the Whole. And we also considered how that has worked, because I wasn't familiar with it, quite frankly.

And it's clear to me, after reading this and other documents that relate to parliamentary law, that a ruling other than what the Chair has made would put the body in conflict with itself. The purpose of the Committee of the Whole is to allow the body to dissolve into that committee and consider important matters before the entire body.

And to require that the posting rule apply before we could do that would be to restrict the body's inherent ability to dissolve into the Committee of the Whole. And so the standing committee rules, as I understand it, don't apply universally to this
proceeding that we're in.

And I think it would be a grave mistake for this body to try to impose upon ourselves a posting rule so that if there's some important matter that we need to consider in an informal basis like a committee hearing, is not as we hear it on the floor, it would unnecessarily restrict our ability to do so.

And there are many examples in our history as a Senate where we have resolved into the body of the whole and considered bills and legislation without posting those things. So respectfully I just wanted to point that out to the body, Mr. Chairman.

SEN. WEST: Will Sen. Williams yield?

SEN. WILLIAMS: I yield.

SEN. WENTWORTH: Sen. West, for what purpose?


SEN. WENTWORTH: Do you yield to Sen. West?

SEN. WILLIAMS: I yield.

SEN. WENTWORTH: He yields.

SEN. WEST: Sen. Williams, I recognize that oftentimes we resolve and we don't post to take up -- we resolve into the Committee of the Whole to take up issues. But in this instance, we decided to
post, follow the Senate rules and post. And then we
decided to repost. And now we're hearing that posting
is not applicable to the Committee of the Whole. And
that's why I'm taking so much time on this, given the
issues of transparency that the public demands and I
know that you support.

The issue in my mind is, is that once we
set up and make this ruling, we're now telling the
public, we're now telling the State of Texas that this
committee can take up legislation without giving the
public notice. That's what we're saying.

SEN. WILLIAMS: Well, Sen. West,
respectfully, I think you turn the intent of the
posting rule on its head with your logic. And if the
purpose of the posting rule is so that the public can
have adequate notice, there is no argument that can be
made. This has been widely disseminated over the
Internet, in the popular media.

And, in fact, the posting here was
merely a courtesy. The purpose of the posting rule is
not primarily to notify the public. The primary
purpose of the posting rule is to make sure that the
other members of the body know what's going on when
you have a standing committee that comes together and
it's subject to the call of the chair.
It is an important secondary thing that we also give notice to the public. But I don't think you can reasonably argue that the public wasn't aware of what proceedings were going to be taking place. We have over 100 witnesses that have testified. And surely you don't think, because it wasn't posted in the back hall, that somebody didn't show up for this meeting.

SEN. WEST: Sen. Williams, I understand your logic. And, frankly, I'm kind of baffled by it. The reality is, is that the decision that y'all are going to make today is that the posting notice does not apply to the Committee of the Whole. That's this argument. And the reality is, is that when you decide to post, there is a certain amount of things that we have to do according to our rules. There are certain rights and privileges and all of that that are tied to that posting. When you repost, it resets the clock; it resets the clock.

Here is the way I look at it: The reality is this -- and you and I had this debate, you and I had this debate when we were going through the rules change -- you guys -- the majority of the body decided to change the rules. Okay. And you have the votes, you have the gavel, you change the rules. And
that's fine. I can deal with that. But those are the rules.

I'm just saying, let's make certain that, given the rules that we now have, that all of us can apply those rules to this situation. And when we sit up and say that the Senate of the whole -- the Senate can resolve itself into the whole committee and these rules, posting is not applicable, I think we need to think about it.

I understand that we're dealing with issues, you know, voting issues that was always something that was very divisive in this body. But what I'm saying to you, as my desk mate and as a colleague, we're got to really think about the decision that we're making today saying that when we take up these types of issues, that posting should not be applicable.

SEN. WILLIAMS: Sen. West, I appreciate the courtesy that you've shown me in explaining your side of this. And what I would politely try to point out to you is that I don't believe that we are today deciding that the posting rule doesn't apply to the Committee of the Whole. That has been decided a long time ago.

SEN. WEST: When was it decided?
SEN. WILLIAMS: That is a part of the body of parliamentary law that exists already. And it is in the spirit of what's in the rules that relate to the Committee of the Whole and the purpose. So, yes, we're reaffirming that that doesn't apply today. And the mere act of giving public notice does not then subject you to a rule that didn't apply before. And I think that's the ruling that the Chair has made, and I think correctly so.

Thank you, Sen. West.

SEN. WEST: Look forward to the vote.

SEN. WENTWORTH: The Chair recognizes Sen. Lucio of Cameron County.

SEN. LUCIO: Will Sen. Williams please yield for a question?

SEN. WENTWORTH: Sen. Williams, you yield?

SEN. WILLIAMS: I yield.

SEN. WENTWORTH: Sen. Williams yields.

SEN. LUCIO: Thank you, Sen. Williams.

I think all of us will agree that rules are important to this process and if we're not to follow them, then as a point of clarification, maybe you could tell me what other rules do not apply to this extraordinary piece of legislation?
SEN. WILLIAMS: Well, Sen. Lucio, it wouldn't be appropriate for me -- I'm not presiding over this -- it wouldn't be appropriate for me to presume the role of the chair of this Committee of the Whole. I think it's up to his discretion on that. And I think that my -- I'll leave it to -- rather than say "to his discretion," I think I'll leave that to the Chair to make those rulings as the issues come forward.

My response was really centered at -- since the issues that Sen. Gallegos raised when he explained his appeal to the ruling of the Chair. And I would reiterate again that it's not my belief that all of the standing committee rules apply to the Committee of the Whole, that we should not restrict ourselves on the ability to resolve into the body of the whole. It is designed for the Senate to be able to rapidly take up an issue with everyone involved. It is a unique situation, much different than a standing committee is.

And so there is a long history, as I said, of this body resolving into the Committee of the Whole to consider matters, resolutions and legislation where no posting was done whatsoever. And to say that the mere act of giving public notice then subjects you
to that rule is to turn the Senate rules on their
head, in my opinion.

SEN. LUCIO: Well, but, you know, they
shouldn't have been posted, then if that would have
been the case, in my opinion, as well. You're a very
good student of the rules, and that's why I asked this
question. I think we need to revisit the rules, and
we need to rewrite the rules so it can be very clear
and not have to waste the public's time next time we
have a proceeding as such.

SEN. WILLIAMS: Thank you, Sen. Lucio.

SEN. WENTWORTH: Sen. Van de Putte.

SEN. VAN de PUTTE: Thank you,
Mr. President. I would like to speak -- appeal -- and
not maybe particularly at Sen. Williams, but he brings
up some very interesting comments. According to our
Senate rules on 13.04, "The rules of the Senate, as
far as applicable, shall be observed in the Committee
of the Whole Senate."

So as far as applicable. And although
this question on this appeal is about posting, we
don't post when we go into Committee of the Whole.
And probably, as Sen. Williams has said, because we
don't know when we're going into the Committee of the
Whole. We don't know when we're going to go back into
the Committee of the Whole and resolve to talk about
the Easter vacation schedule and whether we should be
off on Holy Thursday and Good Friday. And although
that is important, it is about the logistics and the
work schedule.

This is very different. When the rules
of the Senate were changed on the first week of the
session, it was done so to circumvent our normal
two-thirds rule on one particular issue, voter ID.
And because there is a bill -- this is a legislative
bill -- it is not the Senate resolving to talk about a
holiday schedule; it is not the Senate that is
resolving to talk about should we go and attend
someone on the Senate, their parent's funeral and the
logistics for that; it is not the Senate resolving to
plan the retirement party for our former secretary of
the Senate, Betty King.

Those are the things that we do because
it is the business of the Senate. This is the
business of the people. And we are going to add
another barrier to the basic right to vote; and, yet,
by the ruling, we are going to say the people have no
business knowing that we're going to take up a
legislative bill.

And so maybe for the purposes of this
appeal -- this is special. You made it special. You said this was more important than anything else. And so we are taking up -- and maybe the posting is not -- Sen. Williams, I vehemently disagree with you. The posting is not for our convenience. We're here; we have staff. We know when we're going to meet. It is for the public. It is because we are going to add barriers to their basic right to vote, but they ought to have the posting if the Senate is going resolve into the Committee of the Whole to change the way and the possess that they vote. It is their business.

And so this is very different from the Committee of the Whole resolving to discuss a work schedule or to plan a party or to make funeral arrangements. This is the people's business. And I would ask you to think on this appeal. What we are saying is that when there is legislation before the Committee of the Whole, that we don't have to give notice.

Although notice was given -- and it is very much appreciative -- to have this ruling set in our Senate rules for the senators that may not even be born yet, is a terrible precedent. It shuts the public out. So because of the special order and because we're meeting in the Committee of the Whole
for one bill that was deemed so important that it
couldn't go by regular Senate rules, didn't go to the
Committee of Jurisdiction, we changed that.

But we ought to at least afford the
public the opportunity to know, in future generations
when they're about to be asked, to change how they
vote and what processes are used. And so when I ask
you to think about the appeal, don't think about us,
think about all the wonderful Texans here who always
exercise their right to vote.

SEN. WENTWORTH: The Chair recognizes
Sen. Williams.

SEN. WILLIAMS: Thank you.

Well, Sen. Van de Putte, respectfully, I
would say they're here. People from both sides of the
issue are here. And I think the effect of Sen.
Gallegos's appeal would be to send them home so that
they couldn't participate in this process today.

SEN. WENTWORTH: Members, Sen. Gallegos
has appealed the ruling of the Chair. The Secretary
will call the roll. A vote of "Aye" --

SEN. GALLEGOS: Mr. Chairman?


SEN. GALLEGOS: May I -- I want to reply
to Sen. Williams, if I may.
SEN. WENTWORTH: The Chair recognizes Sen. Gallegos.

SEN. GALLEGOS: Sen. Williams, you know, I respect your remarks. And let me just say what my colleagues have already told you in their remarks. You said it's a unique situation. It is. And you said that there was Internet postings, the media that has posted so, you know, everybody is supposed to know.

Well, I beg to differ with you. This is an issue that is unique because you made it unique when we passed that resolution that completely did away with the two-thirds rule. So when you said it's a unique situation, it is, because only -- and only on this issue do we do away with the two-thirds rule that has always been a tradition of the Texas Senate.

And let me remind you, Senator, that we got elected here, everybody on this floor, to notify and at least let our constituents know what's going on here. And I will be the last one to say to them that I'm going to depend on Internet postings and the media to post, you know, this unique bill that you have made unique by the resolutions that we passed earlier this session and doing away with the two-thirds rule on this issue.
So I would really tell you, Sen. Williams, that the only really way to tell the people that elected you and me about this unique situation that we have on this floor today is by public posting, something that we were elected to do, to tell them -- not the Internet, not the media or anybody else, or the grapevine or whatever else you want to call it.

It's a public posting; that's what it is. And I will refer in my appeal to the rules that Sen. Van de Putte did, 13.04. And it says, "The rules of the Senate, as far as applicable, shall be observed in Committee of the Whole Senate." And also on Rule 20.02, it says, "The President's ruling is subject to appeal to the entire Senate."

And that's what I'm doing right now, Mr. Chairman and Sen. Williams. With all due respect, I do appeal the ruling of the Chair.

SEN. WENTWORTH: All right. Members, Sen. Gallegos has appealed the ruling of the Chair. A vote of "aye" will sustain the Chair; a vote of "nay" will overturn the Chair.

The Secretary will call the roll.
ROLL CALL NO. 2

SECRETARY SPAW: Averitt?
SEN. AVERITT: I confirm.

SECRETARY SPAW: Carona?
SEN. CARONA: (Indicated "aye" vote)

SECRETARY SPAW: Davis?
SEN. DAVIS: Nay.

SECRETARY SPAW: Deuell?
SEN. DEUELL: (Indicated "aye" vote)

SECRETARY SPAW: Duncan?
SEN. DUNCAN: (Present, not voting)

SECRETARY SPAW: Ellis?
SEN. ELLIS: (Indicated "nay" vote)

SECRETARY SPAW: Eltife?
SEN. ELTIFE: (Indicated "aye" vote)

SECRETARY SPAW: Estes?
SEN. ESTES: (Indicated "aye" vote)

SECRETARY SPAW: Fraser?
SEN. FRASER: Aye.

SECRETARY SPAW: Gallegos?
SEN. GALLEGOS: (Indicated "nay" vote)

SECRETARY SPAW: Harris?
SEN. HARRIS: (Indicated "aye" vote)

SECRETARY SPAW: Hegar?
SEN. HEGAR: (Indicated "aye" vote)
SECRETARY SPAW: Hinojosa?
SEN. HINOJOSA: (Indicated "nay vote)
SECRETARY SPAW: Huffman?
SEN. HUFFMAN: (Indicated "aye vote)
SECRETARY SPAW: Jackson?
SEN. JACKSON: (Indicated "aye vote)
SECRETARY SPAW: Lucio?
SEN. LUCIO: (Indicated "nay vote)
SECRETARY SPAW: Nelson?
SEN. NELSON: (Indicated "aye vote)
SECRETARY SPAW: Nichols?
SEN. NICHOLS: (Indicated "aye vote)
SECRETARY SPAW: Ogden?
SEN. OGDEN: (Indicated "aye vote)
SECRETARY SPAW: Patrick?
SEN. PATRICK: (Indicated "aye vote)
SECRETARY SPAW: Seliger?
SEN. SELIGER: (Indicated "aye vote)
SECRETARY SPAW: Shapiro?
SEN. SHAPIRO: (Indicated "aye vote)
SECRETARY SPAW: Shapleigh?
SEN. SHAPLEIGH: (Indicated "nay vote)
SECRETARY SPAW: Uresti?
SEN. URESTI: (Indicated "nay vote)
SECRETARY SPAW: Van de Putte?
SEN. VAN de PUTTE: (Indicated "nay" vote)
SECRETARY SPAW: Watson?
SEN. WATSON: (Indicated "nay" vote)
SECRETARY SPAW: Wentworth?
SEN. WENTWORTH: (Indicated "aye" vote)
SECRETARY SPAW: West?
SEN. WEST: (Indicated "nay" vote)
SECRETARY SPAW: Whitmire?
SEN. WHITMIRE: No.
SECRETARY SPAW: Williams?
SEN. WILLIAMS: (Indicated "aye" vote)
SECRETARY SPAW: Zaffirini?
SEN. ZAFFIRINI: (Indicated "nay" vote)
SECRETARY SPAW: Mr. President?
PRESIDENT DEWHURST: (Indicated "aye" vote)
SEN. WENTWORTH: There being 19 ayes, 12 nays and one present, not voting, the ruling of the Chair is sustained.
SEN. SHAPLEIGH: Mr. Chair?
SEN. DUNCAN: Sen. Shapleigh?
SEN. SHAPLEIGH: Welcome back.
SEN. DUNCAN: Thank you.
SEN. SHAPLEIGH: Can we make that vote,
since we don't have electronically recorded votes, an
Exhibit 6?

SEN. DUNCAN: Yes, Senator. I think all
votes should be made part of the record, and they are
part of the record.

Sen. Fraser. The Chair recognizes
Sen. Fraser to lay out Senate Bill 362.

SEN. GALLEGOS: Mr. President?
SEN. DUNCAN: Sen. Gallegos, for what
purpose?

SEN. GALLEGOS: Mr. Chairman, I want to
tag this Senate Bill on Ruling 11.19 on 48-hour notice
to all Senate members, and I believe that's 11.19.

SEN. DUNCAN: Senator, bring your point
of order forward.

SEN. GALLEGOS: My tag is already up
there.

(Brief pause)

SEN. GALLEGOS: Mr. President, I would
move to tag the bill and request a 48-hour notice to
all Senate members pursuant to Rule 11.19.

SEN. DUNCAN: Senator, are you rising on
a point of order?

SEN. GALLEGOS: I'm tagging the bill.

SEN. DUNCAN: Let me rephrase the
question. I think you would have to raise a point of
order on further consideration of the bill, based on
the tag.

SEN. GALLEGOS: Well, I raise the point
of order to disallow any further consideration of
Senate Bill 362.

SEN. DUNCAN: Okay.

SEN. GALLEGOS: And I have done that in
reference by submitting a tag to the Secretary of the
Senate.

SEN. DUNCAN: Thank you, Sen. Gallegos.

For the reasons previously stated in the
prior point of order raised by Sen. West, your point
of order is respectfully overruled.

SEN. GALLEGOS: Thank you,
Mr. President.

SEN. DUNCAN: Thank you, Senator.

SEN. WEST: To make sure the record is
clear --

SEN. DUNCAN: Sen. West.

SEN. WEST: Parliamentary inquiry.

Sen. Gallegos, as well as some other members of the
Senate, filed a motion to tag for further
consideration of Senate Bill 362. Your ruling would
be the same as it relates to that motion, to tag also?
There were two motions to tag filed.

SEN. DUNCAN: Senator, the interpretation and the basis for the overruling of Sen. Gallegos' motion and your motion and a motion with regard to the tag rule would be that the rules do not apply -- are not applicable, and I've made that ruling. And that would be -- the ruling would be consistent with the earlier ruling I made on your motion.

SEN. WEST: Okay. And I just wanted to make certain that we're basically dealing with all the tagged motions that were up there. So tagged rules don't apply to a committee whole either when we're taking up substantive legislation? And that's, in essence, the ruling?

SEN. DUNCAN: Senator, for the reasons that we explained earlier and I think for the reasons that were abated by the Senate and prevailed in the appeal, that the tag would not apply, the tag rule would not apply to the Committee of the Whole.

SEN. WEST: Thank you.

SEN. DUNCAN: Sen. Fraser, you are once again recognized. You have the floor with regard to laying out Senate Bill 362.
LAYING OUT OF SENATE BILL 362

SEN. FRASER: Thank you, members. The three-minute rule is in effect.

I've been sitting here for four hours waiting to lay this out. And, actually, we have a lot of discussion about how I should lay this out, discussion on it. And I think the bill speaks for itself. And I am going to be very brief, probably three or four minutes, and allow the witnesses to move forward, because I think we've wasted enough of the public's time and that we should move forward with hearing from the witnesses.

Members, this bill, I think probably most of you are going to be very familiar with it. It's something we've talked about a lot. Someone back a while ago when we were having lunch asked me the question, said, "How did the talk about this bill get started"?

And I actually came back and sat down, and I've got probably, interestingly, more research and more reading and debate on this bill maybe than one I've ever done, because I'm very interested in the concept. But I think probably if you track it back in our nation's history, is that we look at the ongoing threat of voter fraud that this country has addressed.
really since the start, it goes all the way back.

And we've got many places where we look.

One of them would be Tammany Hall, possibly the Kansas City Pendergast machine. Here in Texas, we probably should look no further to the 1948 Senate race when the Duke of Duval delivered 201 of the 203 registered voters in Box 13 in Jim Wells County in the race between LBJ and Coke Stevenson. Maybe we refer back to Mayor Richard Daley's Chicago machine in the 1960 presidential election where it was alleged that at least one in every 10 votes potentially was a fraudulent or illegal vote, and including multiple votes by the dead that continues throughout our Texas history, even looking at the activity over the indictments and the convictions over the last several years, clarifying that voter fraud not only is alive and well in the United States, it's very alive and well in Texas.

And I think that brings us forward to why we're here today. I believe the danger of the voter fraud has threatened the integrity of the entire electoral process for the entire history of the United States.

In 2005, I think a lot of you are familiar with the fact that the Federal Election
Commission asked a bipartisan commission, and they went out and they tried to get someone to head that up from what I'll call the left, the former President of the United States, Jimmy Carter, a Democrat president that had been the governor of a state, Georgia, that was a Section 5 Voter Rights Act state. They asked him to be one of the co-chairs of a bipartisan commission. Secretary of State James Baker was the other side. That Commission was put in place to look at voter fraud in the United States and come back with a recommendation of how we address that.

That commission in, you know, their reaffirming the danger said, "The elections are at the heart of democracy. Americans are losing confidence in the fairness of elections. And while we do not have a crisis today, we need to address the problems of our electoral system."

During that same time, the Supreme Court made a ruling in Purcell and Gonzalez stating the "Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear" -- and I emphasize the word "fear" -- "Voters who fear their
legitimate votes will be outweighed by fraudulent ones will feel disenfranchised. '[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.'"

It hit very close to home in 2003 when we had a member of our body that I served with. My chairman when I was in the House of Representatives, Steve Wolens, a Democratic House of Representative member and a chairman from the Dallas area, in 2003, he laid out a bill and made a passionate plea to the Legislature because he believed that through voter fraud, that there had been an effort not only for him but also his wife that was the mayor of Dallas.

And he says in the bill that he laid out in his appeal, "Rigged elections in Dallas with people harvesting votes have destroyed our" -- he said, "The ability to cast a vote and have our vote counted is the bedrock of our democracy. We must do everything possible to ensure the sanctity of the vote in our state. And as a society, we must not tolerate the disenfranchisement of our citizens any longer in accusing a group in a Democratic primary of rigging the election and harvesting votes."
That same Baker Commission, the Carter-Baker Commission, in an editorial that President Carter and Baker co-wrote, said, "At the end of the day, there is considerable national evidence of in-person voter fraud. And regardless of whether one believed that voter impersonation is widespread or relatively rare, there can be no serious dispute that it is a real effect that can be substantial, because in a close election, even a small amount of fraud could make the margin of difference."

In 2005 that bipartisan commission that was created by the election reform, recommended that a fair, a free and fair election requires both ballot security and access to voting. "We as a commission have offered to bridge" or "a proposal to bridge the partisan divide by suggesting a uniform voter ID."

That recommendation came from a former President of the United States, had been put on a commission by the Federal Election Commission. The recommendation came because of a concern about voter fraud. And he recommended in 2005 that we develop a program for a uniform voter photo ID. The bill that I lay out today is in response to that.

Senate Bill 362 is really pretty straightforward. It's nothing more than when I walk
in to vote and I lay out my voter registration, that
that person across from me can recognize that I am who
I represent to be, that I am that person on the roll.
And I feel I have an obligation to represent that I am
a legal living person that has the right to vote and I
am that person on that roll.

Under Texas law today, we do not have
that ability. We're going to have witnesses come
forward today, and they're going to tell you about
cases. I have questions that I'm going to ask, and
one of the ones is going to be to the Secretary of
State. We're going to ask about if, when we go into a
voting booth, if someone could impersonate me and
steal my vote and what they could do about it.

And I think a lot of you are going to be
shocked at what our current law in Texas is today.
Without a doubt, there is the ability in Texas from a
lot of different directions or a different way for
someone to steal your identity, your right by your
voter registration and can vote, identify themselves
as you.

The Baker Commission -- and I'm sorry.
Let me back up a second and say one of the other
things that you're going to hear today is that we have
representatives from Indiana and Georgia. After the
Baker Commission recommended that the photo ID be implemented, one of the first states to do a strict photo ID was the State of Indiana. Theirs is very straightforward. It says that the citizens, when they vote, will show a photo ID. If someone doesn't have a photo ID, the state will pay for it.

That law that was put in place actually was in place during the 2006 election, and then again in the 2008 election. It has withstood the challenges through the court system. And this last year, the U.S. Supreme Court confirmed a decision on the Indiana bill in a majority opinion that was given by John Paul Stevens, which is generally considered a moderate to left-leaning justice. He issued the majority opinion, and the opinion was six to three confirming the voter ID bill for Indiana.

Since then, there have been two election cycles. I'm not going to go into the results of that, because we have someone from Indiana that is going to testify to that. But I think it's going to clearly show that instead of somehow discouraging someone to vote, it did just the opposite, that the vote total -- in fact, I'm going to go ahead you give you those, because I think they're very important.

In Indiana over the last two election
cycles, Indiana had the fifth largest increase of
total voter increase in the United States in the 2008
election. In the Democratic votes that were cast,
they were No. 1 in the nation. They were the largest
increase of Democrat votes in the nation, even though
next door in Illinois, where the presidential
candidate was from, had no photo ID registration.
Indiana had a strict photo ID registration. Indiana
doubled the increase of Illinois. It clearly showed
that there was not a suppression there.

Georgia, a Section 5 voter rights state,
they also implemented a strict voter photo ID bill.
This last election cycle, Georgia was the largest
increase in vote totals in the nation. Of all the
states, of the other states that did not have it,
Georgia, after they implemented their photo ID
legislation, had the largest increase in vote totals
in the nation. And we have people from Georgia here.

I think probably a brief description of
my bill, and we'll get into that. And if someone has
questions about 362 and what my bill does, but it's
really pretty straightforward. It just says that when
someone goes in to vote, they have not only the choice
of showing their photo ID, driver's license, but we're
also giving them secondary choices, and those
secondary choices are a lot of secondary choices.

They could show their library card.

They could show any government piece of mail that was mailed to them. Basically anything that would show their identification as a secondary source of identification is going to be allowed under my bill.

And when we start discussing that, I'll be glad to go over the list that is listed of things. But in Texas, the bill that we are laying out actually has a secondary choice. Then if someone doesn't have a photo ID, there is a secondary choice to identify themselves.

I should also clarify that we are only addressing the in-person voting; we are not addressing mail-in ballots, early voting, any of the other things in the election cycle.

I think I'm going to go ahead and close so we can start either the questions and/or bring in the witnesses. But I think it's important to note that in upholding Indiana's photo ID law, in the decision that was given by John Paul Stevens in his majority opinion, he stated, "Confidence in the integrity of our election process is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic
process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised."

We believe Senate Bill 362 goes a long way for correcting that concern.

QUESTIONS FROM SENATE FLOOR

SEN. DUNCAN: Thank you.

Sen. Lucio of Cameron.

SEN. LUCIO: Thank you, Mr. President.

For a question.

SEN. DUNCAN: Sen. Lucio.

SEN. LUCIO: The request was made earlier today to see if we could have the Attorney General here to answer any legal questions we might have on this legislation. As I look around the chamber, I don't see the Secretary of State, my good friend Hope Andrade who I can -- well, who is the Chief Elections Officer of the state, as you well know. And I'm wondering if she will be present maybe to respond to any questions that the members might have, or the Department of Public Safety or any other agency that might come into play with this piece of legislation. Will that be the case?

SEN. FRASER: I'll address the first question first. The Secretary of State, I share your...
interest in that. And, actually, when that person comes up, I have a lot of questions that I would like to ask also. Unfortunately, the Secretary of State, Hope Andrade, is on an airplane as we speak, out of the country. But the No. 2, the Assistant Secretary is here. Coby Shorter is over on the side right now and will be available for any questions that would come up.

Actually, that is one of my invited persons for questions. I have him scheduled in the mix. But I think any member that has a question of the Secretary of State's office would be free at any time for a resource.

The DPS, I have not personally asked them to be here to testify, but I believe probably they're monitoring this as we speak. And I would suspect if we wanted somebody from the DPS to answer questions about motor voter or any of those issue, I feel sure that we could get them over. I have not invited them.

SEN. LUCIO: Thank you.

Mr. Chairman, you also mentioned that voter ID proposal for bipartisan and serve the public interest by protecting the integrity of the ballot, and you also mentioned the Commission on Federal
Election reform that was co-chaired by former President Jimmy Carter and former Secretary of State Jim Baker supported laws that required voters to show a voter ID before voting.

I just want to ask you that, that in the days after the release of the commission's report, I'm informed that President Carter and former Secretary Baker stated in an op ed in the New York times that their intent had been misconstrued and clarified that until we have universal registration, we cannot make having such an ID be a condition of voting. Are you aware of that op ed?

SEN. FRASER: Tell me, where was that?
SEN. LUCIO: That op ed?
SEN. FRASER: What was the date on that?
Tell me the date on that, please.

SEN. FRASER: And I guess I would defer -- I obviously can't get in the minds -- and, by the way, we do have someone from that commission here that we can question, will be the second person that I will call up. And so you'll have the right to ask
them, because they're from that commission.

All I can go by is a newer -- you know, everyone has a right to, you know, their developing thoughts. But the newest thing I have on record was February 3, 2008. It was an op ed contribution, "A Clearer Picture on Voter ID" by Jimmy Carter and James A. Baker III, which I'm assuming -- February 3, 2008 is after September 23, 2005. So this would be their more current thoughts.

And in that current editorial that I have here in my hand, it said, "In 2005, we led a bipartisan Commission . . ." And I'm not going to read the whole thing, but it says: "We bridged a partisan divide by suggesting a uniform voter photo ID." And this is February 8 (sic), 2008.

SEN. LUCIO: 2008?

SEN. FRASER: 2008. Yours is 2005. So I don't know what to say, other than my story is three years newer than yours.

SEN. LUCIO: Well, I guess they changed their minds after two thousand --

SEN. FRASER: Everybody gets to change their mind. All I know is that this is the most current thing that I have on file. But that was a op ed contribution to the New_York_Times February 3,
2008, you know. I'm --

SEN. LUCIO: Thank you very much, Senator.

SEN. FRASER: Thank you.

SEN. WATSON: Mr. President?

SEN. DUNCAN: Sen. Watson of Travis.

SEN. WATSON: Thank you, Mr. Chairman.

I just want to ask a couple of questions.

And first, let me say that I think you and I probably agree that there is not a senator in this room that doesn't want to protect the sanctity of the ballot box, regardless of how they might feel about 362.

SEN. FRASER: I would share we, without a doubt -- we've had this conversation -- is that I think we both have the same intent, is that neither one of us want voter fraud and we would do anything we could to stop voter fraud in Texas. And I think that's --

SEN. WATSON: Nobody wants --

SEN. FRASER: I think we agree with that.

SEN. WATSON: Nobody wants voter fraud.

And there may be some disagreements about how we go about that. Let me ask a couple of questions about
the bill. And first let me mention something about
the Carter-Baker Commission. I'm not sure there was a
change in opinion. But what they said in that
February 2008 is, they were looking for a universal
voter identification. Is that correct?

SEN. FRASER: I believe the term was
"uniform" --

SEN. WATSON: Uniform.

SEN. FRASER: -- "voter ID." And,

actually, what they suggested --

SEN. WATSON: Was REAL ID.

SEN. FRASER: -- is that the federal
government would issue a photo ID to every person in
the United States.

SEN. WATSON: And what they've actually
indicated is that in order to be in favor of a uniform
voter ID, they believe that what needs to happen is,
the government would be in a position to give everyone
an identification so that you wouldn't run into
situations where there might be discrimination. Is
that correct?

Well, for example, they're affirmatively
said --

SEN. FRASER: They have affirmatively
said that somebody should pay for it, the federal
government or the states, but they would issue a photo ID.

SEN. WATSON: So that everybody would have a uniform identification?

SEN. FRASER: Exactly what I'm laying out in this bill.

SEN. WATSON: And I don't disagree.

SEN. FRASER: I --

SEN. DUNCAN: Senators, senators --

SEN. FRASER: I can answer you. Just a second.

SEN. DUNCAN: May I interrupt?

SEN. FRASER: Sure.

SEN. DUNCAN: You've got a court --

SEN. WATSON: Well, we're both interrupting. Why don't you?

SEN. DUNCAN: Well, no. I'm just trying to help you out. The court reporter can only type down one person talking at a time, and so you have a tendency --

SEN. WATSON: Fair enough.

SEN. DUNCAN: -- to talk over each other. So if you could observe that rule, it will help the record.

SEN. WATSON: And we do that even in
private conversations, I might add.

SEN. FRASER: Unfortunately, we are on
the committee together, and this is a common
occurrence, so we will have to try to control
ourselves.

SEN. WATSON: I think you were the last
one talking.

SEN. FRASER: The final statement, I
think they say -- let me read this. Actually, it's
interesting that the last -- this was in -- they were
writing this in response, urging the Supreme Court to
validate the Indiana law. And it says that -- they
are suggesting that states should move to implement
photo IDs gradually, that a free ID should be
available. But they're also saying that the Supreme
Court can lead the way on the voter ID issue by
validating the Indiana ruling, which is the photo ID.

And, again, it's the thing I just read.

It will move "... our national leaders and the
entire country to bridge the partisan divide on a
matter that is important to our democracy." The
Supreme Court should "... support voter ID laws that
make it easy to vote but tough to cheat," from their
editorial.

SEN. WATSON: And they had indicated --
I'm sure we'll hear some other testimony about this. But the Carter-Baker Commission had indicated that they believed the way Georgia had set theirs up was discriminatory in part because the government wasn't, as you just indicated, making it easy for people to be -- all people to be able to get a uniform identification.

SEN. FRASER: They want it to be easy to -- their suggestion was have a photo ID, have someone pay for it, make it easy for them to get it. But they say, "Here is what we want to do. We want a voter ID law that makes it easy to vote but tough to cheat."

SEN. WATSON: Well, let's talk about what the current situation is so that we can be clear on what it is that we would be doing if Senate Bill 362 were to pass. Currently we have a form of voter identification in Texas. And what it is, is we have an identifying document that we call a voter registration certificate. Isn't that right? The state provides a voter registration certificate to those who register to vote?

SEN. FRASER: The answer to that probably is "Yes" and "No," is that the way we currently identify ourself when we go in is a voter
registration certificate. The problem with current law is, there is no way that that person that is behind the voting booth knows, "Are you really that person?" because -- hold on a second -- you know, there is nothing to say that I couldn't pick up my brother Steve's voter ID and walk in and lay it on the table and the -- we're going to ask the Secretary of State this -- but I think the procedure in law says identify:

- Are you on the list? Yes.
- Is this your correct address? Yes.
- Are you in this precinct? Yes.
- Here is your ballot -- even though I'm voting with my brother's card.

SEN. WATSON: I ought to give you a flag so I know when you're done. But, Senator, the point is, I want to try to set what the benchmark is for what is required now when someone goes in to vote. And when someone goes in to vote right now, as you just indicated, all they have to do is show that certificate. The election officer sees their name and sees that their name is on a list of registered voters, and then they're able to vote. Is that correct?

SEN. FRASER: Well, let me ask you --
the Secretary of State will clarify this. But if
you're look in Section -- is 63.001?

SEN. WATSON: It is.

SEN. FRASER: -- of the election -- and
if you've got it in front of you, you can read along.
It says bring your card, registration card, hand it to
them. They verify: Is the name on the card on the
list? Is Kirk Watson on the card? Are they also
listed as registered? Yes, it is. They say,

"Is this your current address?"
"Yes, it is."
"This is the proper precinct you're
going to be voting in?"
"Yes, it is."
"Here is your ID (sic)."

SEN. WATSON: And then you get to vote.

SEN. FRASER: I mean, "Here is your" --
can I keep going, though? The interesting thing on
this, though, is, Senator, that -- let me give you a
hypothetical -- and we'll ask the Secretary of State
to verify this -- is that let's assume that they
mailed you your voter registration to your mailbox,
but your next door neighbor saw them dropping it off
and he walked over and picked it up out of box. And
he beat you to the polling place. And he walked in
where someone didn't know who Kirk Watson was and he
laid it on the table, and he said, "I'm Kirk Watson,"
and they went through all those scenarios, that person
would be given a ballot and would vote for you, that
put it in the pile. And they would walk out the door,
and that vote would count in the selection. Now,
we'll verify with the Secretary of State that that's
correct, but I believe that's the way it happens right
now.

SEN. WATSON: And that really wasn't my
questions. So let me ask my --

SEN. FRASER: I'm practiced with a
lawyer where you don't answer the question that was
asked.

SEN. WATSON: I notice you've been
trying to do that. Let's just walk through what the
process is and the change in the law. Currently all
that is required is to show the certificate, walk
through the way you just did, and then you can vote.
Senate Bill 362 changes that.

And it says that while you would still
submit the voter registration certificate and that
part is the same, it then adds the requirement that in
addition to the current standard practice or procedure
of presenting that voter registration certificate, you
must also submit either a picture identification or
two types of other identification that's listed in
Senate Bill 362.

SEN. FRASER: Senator, I guess I would
ask you -- I'm assuming -- you travel a lot. You've
flown since 911?

SEN. WATSON: I'm not sure how that is
answering my question. Is that what your bill does or
doesn't do?

SEN. FRASER: I'm saying that this is
going to be a whole lot like -- even if you were
getting a library card, they're going to say, "We need
a form of photo identification, and they're going to
do -- like they do at the airport, they're going to
look at the card, they're going to look at you,
they're going to look back at the card and say, "Yes,
you are the person that you are pretending," or "you
say you are. You" -- Kirk Watson is the person on the
photo; kirk Watson is the person on the registration
files. And the answer is yes, that would be the way
this would work.

SEN. WATSON: So the answer is yes, that
there is an additional requirement so that people who
could vote under the current voting standard practice
and procedure will be precluded from voting if they
SEN. WATSON: People who could vote under the current voting standard practice and procedure will be precluded from voting, if Senate Bill 362 passes, if they don't meet those new requirements?

SEN. FRASER: No one is going to be precluded from voting. Everyone that walks in -- under 362, every person that walks in to vote will be allowed to vote.

SEN. WATSON: If they meet the new requirements?

SEN. FRASER: Every person that --

SEN. WATSON: That's provisional balloting.

SEN. FRASER: -- walks in --

SEN. WATSON: Is that what you're talking about?

SEN. FRASER: Every person that walks into the registration to vote can vote. No one will leave the voting place without being able to vote.

SEN. WATSON: Let me ask my question differently. If they don't -- if someone walks in
today, under 362 -- let's say 362 passes -- and they
don't have the new requirements that are set forth in
362, they will not be able to vote a regular ballot
the same way people today, with just a voter
registration certificate, are allowed to vote a
regular ballot?

SEN. FRASER: Okay. If someone walks in
and -- I think right now the data is showing the last
year of the people that signed up, 98.5 percent of the
people that registered to vote had a driver's license
and they registered that way. So if they didn't have
that, if they're one of that one or two percent that
did not have a driver's license, they have a long
laundry list of things that they could use to identify
themselves to show that they are, in fact, who they
say they are. If for some reason they didn't have any
of that, they will be given a ballot. The ballot will
be marked a provisional ballot, and then we will have
the ability then to identify: Are they who they say
they are? So the answer is no, they're not going to
leave without being able to vote.

SEN. WATSON: And maybe I didn't ask my
question well and so you didn't understand it. My
question is, under 362, if they don't meet the new
requirements, there will be people that otherwise
today would be able to vote by just showing a voter registration certificate that will not be able to vote a regular ballot. Is that correct?

SEN. FRASER: Everyone leaving the polling place will be able to vote.

SEN. WATSON: But it may be a provisional ballot. Is that right?

SEN. FRASER: Provisional ballot, though, once they verify their identification and they show that they are who they say they are, the vote counts. So the answer is, everyone that leaves will be able to vote.

SEN. WATSON: Let me ask you a question about the statistics you just mentioned. Do you have any data regarding the racial composition of those people who are currently in Texas that are without a driver's license or other photo ID?

SEN. FRASER: Unfortunately, no, that data is not, I don't think, readily available. If it is, no one has given it to me. All I can go by is the number -- they gave me the raw numbers of who had a photo ID that was registered in, you know, the last year. 2006 is the latest number. And of those, you know, you had 1.5 percent of the population that registered to vote that it appeared didn't have or
didn't offer their driver's license up as a deal. So it's a very small segment, and I don't believe they broke down the racial composition of that.

SEN. WATSON: Where did that data come from?

SEN. FRASER: DPS, motor voter.

SEN. WATSON: DPS. And how many people would that be?

SEN. FRASER: I may need to correct that. I stand corrected. That came from the Secretary of State's office. It was the total number of people registered with a Texas driver's license. I'm sorry. I stand corrected.

SEN. WATSON: Let me make sure I understand the number that you're indicating. What you're indicating is that of the total population that's registered to vote, the Secretary of State's office is providing data that says 98.5 percent of those have a driver's license?

SEN. FRASER: I don't think I said that.

SEN. WATSON: Okay. Well, that's what I'm trying to find out. I want to be clear what you said.

SEN. FRASER: Okay. Well, let's do it again. Last year, in 2006, the number of people that
registered to vote in 2006, that registered to vote that year, of those totals, there were 2,419,188 that registered with a driver's license. There were 37,490 that didn't use their driver's license to register.

SEN. WATSON: So that would not --

SEN. FRASER: So that --

SEN. WATSON: That wouldn't be taking into account any long-time voters who might no longer have driver's licenses or have allowed their driver's license to be expired for more than two years or that nature. Is that correct?

SEN. FRASER: I actually have that data, too.

SEN. WATSON: Good. Why don't you give that to me.

SEN. FRASER: Total number of people on their staff -- now, have to keep in mind that some of these people that have been on the rolls for 30, 40, 50, 60 years, some of this has changed. And so some of them that signed up, once they were okayed and identified, they stayed on the roll and they didn't have to add it.

My mother would be a good example, but she didn't get her driver's license until well into her married life. On her registration form, she is
not registered as showing to have a photo ID; but, in fact, I do know that she has one. The ones in the
records that show that, they show that there were 5,601,000 that have a license. The ones that neither
numbers show up, either social security number or voter ID, 809,000. So in their records, it's about
88 percent of the people, in their records, give the driver's license as their identification source.
There's 12 percent they don't know about. But in that, the assumption is, a great many of those now
have a photo ID, people like my mother.

SEN. WATSON: But we don't know what that number is?

SEN. FRASER: We don't know for sure.

SEN. WATSON: And how many people are we talking about when we talk about 12 percent?

SEN. FRASER: Well, in the records, they have 809,041 that they don't have in their records a number registered, but they also readily will admit that those records are very outdated because what happens when someone is registered, as soon as they're approved as a registered voter, they don't ever have do go through this again. So --

SEN. WATSON: Right.

SEN. FRASER: You can't automatically
make the assumption that there's 809,000 people that
don't have it. I think the belief -- probably one of
the things that we may be having a lot of these
questions you're asking that could be answered by
other states. Georgia has a very close makeup of the
way our population is made up. Indiana is a little
different. But in those cases -- I think the
registrar of both of those states are going to be
here, and they're going to tell you they went through
the cycle and identified the ones that didn't have it.
And I believe they're going to tell you they were
shocked at how few people didn't have a photo ID.

SEN. WATSON: Well, one of the things
that I think we need to be concerned about before we
vote on this floor is whether or not, when the changes
that you propose get made, whether or not that's going
to have a negative impact on certain populations. And
the 12 percent that you're talking about there, the
800,000 to a --

SEN. FRASER: The unknown category.

SEN. WATSON: The 800,000 to a million
people, do we know what the racial breakdown is of
that? Do you know how many African-Americans, how
many Hispanics, those that speak only Spanish?

SEN. FRASER: I'm not advised, because I
don't -- at least I don't remember on the -- I can't remember on either the driver's license and/or the voter that it had a place in there to click, you know, Anglos.

SEN. WATSON: Are you familiar, Senator, with any statistical analysis that's been done regarding the potential effect of Senate Bill 362's new requirements on African-Americans?

SEN. FRASER: A lot of what I'm at least observing, you will hear today from Indiana and Georgia, two states that implemented it. And they're going to talk about the people that voted in the racial breakdown before they implemented it and after they implemented it and what happened in --

SEN. WATSON: Again, I would --

SEN. FRASER: So I think -- what I'm hoping to do is have facts speak for themselves.

SEN. WATSON: Well, and I'm looking forward to that. I'm saying you, though, with regard to your bill, Senate Bill 362, are you familiar with any data or study that's been done with regard to some sort of statistical analysis concerning the effect of the new requirements of Senate Bill 362 on -- and I'll just mention a couple of populations -- African-American population, Hispanic, people making less than
$35,000 a year, people who speak only Spanish, any statistical analysis of the effect of these new requirements on those people?

SEN. FRASER: Well, I guess the assumption would be, the people in Texas, even though we're independent, we're also a whole lot like the people in the rest the nation. Those statistics are available nationwide, because we already have this being implemented other places. We're going to have witnesses that are going to testify to that. And I think you're asking a subjective question that we have objective data that is available that the witnesses are going to lay out. You're asking have I done that? The answer is no, but I am pulling data from the academics that have done that and have delivered back.

SEN. WATSON: As it applies to Texas?

SEN. FRASER: Well, you assume it would apply to Texas, if they're citizens of the United States. And, you know, I don't know why it wouldn't apply.

SEN. WATSON: Well, so that I'm clear, what we can expect to hear is data related to states other than Texas. But you're not familiar with any statistical analysis that's been done regarding the impacts or effects of the new requirements of Senate
Bill 362 on minority populations in the State of Texas?

SEN. FRASER: Actually, Senator, you're going to hear some testimony from some people from the major cities in Texas and things that have happened and what, you know, possibly they believe. But I don't know that I can answer your question.

SEN. WATSON: All right. Fair enough. Let me ask a quick question about funding under this. Can you point me in this bill, Senate Bill 362, where there is any provision to educate voters about this change requirement for more identification?

SEN. FRASER: Do you see the section that says "Education" --

SEN. WATSON: Yes, I do.

SEN. FRASER: -- "Voted Education"?

SEN. WATSON: And tell me -- what that says is that the Secretary of State and voter registrars are going to put it on their website. Is that correct?

SEN. FRASER: Yes.

SEN. WATSON: Is that the only education that's identified in this bill?

SEN. FRASER: We are anticipating a -- you know, we're going to have to educate not only the
registrars, the poll workers, we're going to have
posting outside of the voting place of the
requirements of this. I would assume one of the
things that you're going to ask is, in Ohio and
Georgia, both that they had mailers to the voters
talking about these changes. Obviously, the specifics
of that are not included in this bill. But as a
member of the Senate and assuming this bill passes,
that I think I am assuming everyone in this body would
be sympathetic, that we should include some funding to
make sure that voters are educated.

SEN. WATSON: So you anticipate that
there would be some fiscal note to this bill?
SEN. FRASER: Well, no. This bill only
has -- it has no fiscal implications.

SEN. WATSON: And that's because there's
no money put into it for any of the things you just
talked about in terms of educating voters?
SEN. FRASER: And again, if there was
education, obviously, the education, depending on how
much education it was, there could either be no fiscal
impact or it could be some. Again, you're being
subjective.

SEN. WATSON: All right. I'm not sure
that's the case, but let me make sure I'm clear.
Under the current bill, there's not any ability to educate the voters about these new requirements, other than that it would be posted on the Secretary of State's or a county voter registrar's website?

SEN. FRASER: We would -- actually -- let me ask a question of staff.

(Brief pause)

I think the question you're asking is that every time a registration card is sent out, there will be an explanation with that registration card, which I'm assuming you're calling the education part of that. So the answer is yes, there will be an education go out when the registration cards are sent out. So a person's --

SEN. WATSON: So if somebody registers newly, they'll get that information?

SEN. FRASER: I get a registration card every two years.

SEN. WATSON: So every time that -- what you're suggesting is, that's going to be -- the substance and sum of the education will be on new registration cards?

SEN. FRASER: And, quite frankly, you're getting into an area of the technical part of the way this would be administered by the election division.
In the bill we do specify that when a registration card is sent out. All I know is, I get one every two years, I get a new registration card. It couldn't be real difficult in that to include an explanation of this bill, what will be included, and make sure that they understand that whenever they show up at the polls, you need to do this.

So the answer of -- the language of the bill says that is anticipated. Now, the actual agency itself that administers, the Secretary of State's office, I think probably would be the one to answer that question.

SEN. WATSON: And we don't know -- you don't know, as we stand here today, how much that costs?

SEN. FRASER: What it will cost? Well, right now we have given them funds to send out that registration card. And if all they're doing is putting another piece of paper in that registration card, I just can't imagine that they can't take care of it out of their regular budget.

So I think where you're trying to go -- will there be an appropriation for that? -- I don't anticipate that that's necessary. But you're a member of this body. And if you want to recommend that,
after this bill passes, that if you want to offer up
to the Appropriation Committee and talk to Chairman
Ogden, I think you have every right to do that. I
can't speak for the Secretary of State the way this
will be administered.

SEN. WATSON: Well, I'm just accustomed
to when bills come into committee, we tend to know or
are supposed to know what the fiscal note is at that
time so that we don't vote on something, only to later
have a new fiscal note come in.

SEN. FRASER: Did you get a copy of the
fiscal note?

SEN. WATSON: Yes, and it said zero.

SEN. FRASER: There is your answer.

SEN. WATSON: Well, and what that means
is, there's going to be little education, and we'll
talk about -- Chairman Duncan has made a good point,
that the court reporter has now been going -- and
while you and I may be enjoying our repartee, she
probably needs a break.

So with the Chair's permission and with
Sen. Fraser's permission, I'll be more than happy to
yield the floor for the time being so that we can take
a break for the court reporter.

SEN. DUNCAN: Thank you, Sen. Watson.
And, members, we'll stand at ease for 10 minutes. We'll go back in at exactly 2:50.

(Recess: 2:42 p.m. to 2:56 p.m.)

SEN. DUNCAN: The Committee of the Whole will come back to order.

Sen. Watson.

SEN. WATSON: Mr. Chairman, I'll yield for other staff's questions, so we can move forward.

SEN. DUNCAN: All right.

Sen. Shapleigh.

SEN. SHAPLEIGH: Thank you, Mr. Chair. If I may, some questions of the author.

SEN. FRASER: I would love to answer questions.

SEN. SHAPLEIGH: Senator, you, in laying out your basis for filing this bill, talked extensively about the Carter and Baker Commission. Do you remember the year that commission -- when they issued their report?

SEN. FRASER: Senator, there is a reference in the forward to the report that I believe says 2005. And I'm assuming the Commission was formed that year, and I'm assuming they also issued the report. But I'm also going to punt on that one, because we have someone from the Carter-Baker
Commission that is here, that if we can get past these
questions and get to our witnesses, I've got people
that can answer that question a lot better.

SEN. SHAPLEIGH: Okay. You quoted from
their words in an op ed article. And what I would
like to do is give you a copy of an op ed article that
they put in The New York Times one week after issuing
the report, so that we can talk about what their
intent or what they thought about this report. You
have their -- what we just pulled off what Sen. McCain
would call the Google, an editorial from Jimmy Carter
and James Baker themselves dated September 23, 2005,
which was the week after they produced this report.
And I would like you to, if you would, see if I'm
reading this correctly.

"This week, we issued a report that
bridges the gap between the two parties' perspectives
and offers a comprehensive approach that can help end
the sterile debate between ballot access ballot
integrity. Unfortunately, some have misrepresented
one of our 87 recommendations. As a result, they have
deflected attention from the need for comprehensive
reform."

"Since we presented our work to the
president and Congress, some have overlooked almost
all of the report to focus on a single proposal - a
requirement that voters have driver's licenses or
government-issued photo IDs. Worse, they have
unfairly described our recommendation.

"Here's the problem we were addressing:
24 states already require that voters prove their
identity at the poll - some states request driver's
licenses, others accept utility bills, affidavits or
other documents - and 12 others are considering it.
This includes Georgia, which just started demanding
that voters have a state-issued photo ID, even though
obtaining one can be too costly or difficult for poor
Georgians. We consider Georgia's law discriminatory."

Are these the same guys that issued the
report that you're relying on?

SEN. FRASER: And I guess I would remind
you that the Georgia law, they're a Section 5 voter
rights state, and they were approved. As of
February 8, 2008 of this year, I believe they were --
that final appeal was -- you know, they ruled with
Georgia. And Georgia's act -- both was approved
through DOJ, approved through Section 5 and was
approved through the courts.

Again, I don't -- all the things that
you're asking, you address several different issues
that we have witnesses here that actually know the
details of this. You're asking me, from 2005, to get
in either President Carter or James Baker or staff or
the other 21 members on the commission, what was in
their head then and what was in their head in 2008
when they released the article to The New York Times,
the guest editorial. I think those would be better
answered by our witness that is here that is sitting
in the back waiting to testify. We also have Indiana,
and we've got those Georgia people. There's two from
Georgia that will tell you how this impacted their
voters, including minorities.

SEN. SHAPLEIGH: Let's go if we can --
do you have the fiscal note on this bill, the one that
came with our packet? I'm looking at the last
paragraph that describes the costs in this bill and
what the anticipated fiscal note might be.

SEN. FRASER: I've got it. What are you
referring to?

SEN. SHAPLEIGH: Well, when you look at
the top, it says "No fiscal impact implication to the
state is anticipated." Is that correct?

SEN. FRASER: That is correct.

SEN. SHAPLEIGH: And when we look at the
bottom, after it describes putting up a website which

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would be part of the state's obligation, then at the
bottom it says, "Based on responses from a sampling of
election authorities and county clerks, fiscal impact
from implementing provisions of the bill would vary by
county. Costs would include at a minimum those for
printing signs to post at each polling place, which
would not be significant. Other potential costs would
be associated with additional training and posting
information to the county website. Again, those costs
are not expected to be significant. One smaller
county response anticipates that the new provisions
regarding casting a provisional ballot would require
hiring additional staff, resulting in a moderate to
significant cost."

Now, my question is, where is the
training going to be done? Who will do the training
with respect to those that will administer and enforce
the rules that you propose to pass today?

SEN. FRASER: And I will tell you again
that we have an expert resource witness that can
answer that question, that if we can get on with the
testimony, that the persons we have here I think are
prepared to answer that question.

SEN. SHAPLEIGH: But as the author of
the bill -- and your intent is important in
establishing this -- in this fiscal note, there is no money for training at the state level, that in this fiscal note it's contemplated that locals in a broad verify of the polling places around the state would be responsible for the training under this bill. Is that correct?

SEN. FRASER: My intent of this bill is to establish a system of voter identification to try to eliminate fraudulent voting and would be implemented by the Secretary of State. The fiscal note to the bill is like we always do on every piece of legislation. It is sent back in. And the fiscal note, as delivered back to the members of the Legislature, it says there is -- no significant fiscal implication to the state is anticipated.

SEN. SHAPLEIGH: Okay. Well, let's get down, if we may, to a "Yes" or "No" answer. The fiscal note on your bill says, "Each county clerk would be required to provide a session of training using the standards adopted by and the materials developed by the Secretary of State as soon as practicable as well." Is that your intent under the bill that you drafted?

SEN. FRASER: I guess I would refer you back to the bill itself. We've got the training...
section, the wording of the bill. If you would
like -- I'll read it to you if you would like for me
to. But the wording of the bill is the instruction to
the Secretary of the State and the counties. And then
the Secretary of State would be -- I think it's their
job to implement. But, again, the expert witness can
answer that.

SEN. SHAPLEIGH: In your opening, in
talking about the need for this bill, you referred to
Cooke County, you referred to LBJ and Duval County.
Are you aware of and do you personally know Royal
Masset?

SEN. FRASER: And I guess I would ask
what Royal Masset has to do with Cooke County?

SEN. SHAPLEIGH: Well, nothing. But
your examples came from other places to lay the basis
for the need for this bill. And my question is, do
you know, were you aware that Royal Masset was the
political director of the Republican Party for 15
years?

SEN. FRASER: Well, I guess the fact
that I recognize that his name is Royal "Ma-say"
rather than Royal "Mas-et" would give some indication
that I know Royal "Ma-say."

SEN. SHAPLEIGH: So if Royal "Mas-et" in
something that was posted on line last time this bill
came up, who was the political director of the
Republican Party, if he were to say, "Anyone who says
all legal voters under this bill can vote," doesn't
know what he was talking about and, "Anyone who says
that a lack of IDs won't discriminate against
otherwise legal minority votes" is lying, do you have
any way -- do you have any way of determining why he
would say that?

SEN. FRASER: I have no input.

SEN. SHAPLEIGH: If Royal Masset were
quoted in this account as saying, "In my involvement
with over 5,000 Republican candidates, I have never
seen one case of Republicans committing voter fraud,"
do you have any idea why he would say that?

SEN. FRASER: I am not advised.

SEN. SHAPLEIGH: If Royal Masset said in
his quote, "When voting in America is only allowed to
healthy and wealthy people than (sic) the America I
know is far sicker than my mother. House Bill 218" --
which is the bill that came up last session, identical
I believe to the bill that you're carrying -- "is a
direct descendent of poll taxes, and of allowing only
white male property owners to vote. In its effect it
is racist, barbaric, antidemocratic and contrary to
everything that made America great."

Do you have any idea why a former political director of the Republican Party would make that statement?

SEN. FRASER: No other advice other than to say that the three sources that I quoted in my opening remarks, two were Democrats and one was a left-leaning Supreme Court Justice that all make, you know, comments the other direction. And, actually, Rep. Steve Wolens commented about the fraud and the voter harvesting that happened in a Democratic primary. So I'm assuming people on both sides of this issue have opinions.

SEN. SHAPLEIGH: Now, I think -- I thought I heard you mention the name Karl Rove as one --

SEN. FRASER: I don't think I mentioned Karl Rove.

SEN. SHAPLEIGH: Okay. Let me ask, are you personally, other than the hearsay statements from Steve Wolens and others, are you personally acquainted, do you know of any voter fraud, you yourself?

SEN. FRASER: Well, the hearsay statements, those were actually statements by Steve
Wolens he made -- I think he made those on the House 
Floor in laying out his bill, so I don't think those 
are hearsay. He represented them as facts.

SEN. SHAPLEIGH: In connection with your 
investigation and your desire to pass this bill, did 
you talk to the Attorney General of the State of 
Texas?

SEN. FRASER: Ask that question again.

SEN. SHAPLEIGH: In your investigation 
of this bill as you worked it up, did you consult with 
the Attorney General of the State of Texas?

SEN. FRASER: I guess I need a clear 
question. You know, what -- "consult" is a very broad 
lawyer term.

SEN. SHAPLEIGH: Did you talk to him?

Did you ask him about voter fraud?

SEN. FRASER: I talk to the Attorney 
General quite often on a full range of issues.

SEN. SHAPLEIGH: Did you talk to him 
about this issue?

SEN. FRASER: I have talked to the 
Attorney General about a wide range of issues.

SEN. SHAPLEIGH: Did you talk to him 
about voter fraud and the nature, scope and extent of 
it here in Texas?
SEN. FRASER: No.

SEN. SHAPLEIGH: Okay. Were you aware that he did a rather extensive investigation searching for voter fraud in Texas and spent approximately $1.4 million on that investigation?

SEN. FRASER: I guess I would dispute the statement that you just made, is that the Secretary of State was giving an appropriation of $1.4 million that they used in the special investigation, unit investigation. Within that $1.4 million, it came from federal funds that were spent on election fraud. The issues they used that on was the Eldorado YZF Ranch case, the Texas Youth Commission, the hurricane-related rapid response efforts, the market manipulation and penny stock fraud case, the ERCOT case, the cyber case, (inaudible) unit, identity theft, public corruption, money laundering and election fraud.

SEN. SHAPLEIGH: Okay. So I'm looking at Attorney General Greg Abbott's press release from March of 2006 where he announces, "In Texas, an epidemic of voter fraud is harming the electoral process and it's time we rooted it out." Do you recall when he launched that investigation?

SEN. FRASER: I do.
SEN. SHAPLEIGH: And reading further in his press release, "At first glance, these might seem to be like isolated events in far-flung towns. Step back and the picture looks just as sinister as it did 60 years ago. For example, Texas has long been a haven for paid political operatives who target seniors and the disabled to handle their mail-in ballots for them. Many of the cases referred to my office by the Secretary of State fall into this category."

Do you remember that press release?

SEN. FRASER: And I think you're going back and addressing the case of the Steve Wolens' bill that he filed on the mail-in ballots, and I don't think that particular issue has anything to do with Senate Bill 362. My bill relates to the voter identification issue when we're investigating --

SEN. SHAPLEIGH: Well, I --

SEN. FRASER: I make reference to the Wolens bill because it is part of the fraud history and voter fraud. But the investigation you're talking about has nothing to do with the bill we're laying out right now.

SEN. SHAPLEIGH: Well, here is his press release. Here is the title of it: "Helping Stamp Out Voter Fraud in Texas." That's exactly what you're
bringing forward today. Right? Is that what you're
trying to address in your bill?

SEN. FRASER: Could we get a copy of
that? You're referencing something. We're looking
through. And for some reason -- is all the
information we have. For some reason I can't find
that one. We thought we had them all. But I'm sorry.
I don't have that one.

SEN. SHAPLEIGH: Okay. This is his
press release off of the website when he launched his
investigation in March of 2006.

SEN. FRASER: And, Senator, out of
fairness, I don't regularly go to the Attorney
General's website to read every press release that
comes out. So I'm sorry, I don't --

SEN. SHAPLEIGH: I understand. But
you're bringing a bill and you led this Senate to
believe and you're laying out the case for widespread
voter fraud in the State of Texas. And we've had, to
my knowledge in the last two years, one major
investigation by the Attorney General of the State of
Texas. And I want to get into exactly what that
widespread voter fraud looks like after that
investigation. That's where I'm going. That's what I
want to find out.
So in this press release, he's laying out the basis for widespread voter fraud, and he launched -- his investigation spans, as you say, among other things -- investigating other issues, $1.4 million. And by my account here, that investigation produced exactly 13 indictments. Twelve of the 13 were minorities; nine, Hispanics; three, African-Americans. Thirteen of 13 of the indictments were Democrats. Now, do you have any reason to dispute those numbers with us here today?

SEN. FRASER: Yes, I do. The exact numbers are 30 suspects, 22 that have already been prosecuted.

SEN. SHAPLEIGH: In terms of the indictments, when he brought the indictments --

SEN. FRASER: Indictments on 30 suspects.

SEN. SHAPLEIGH: How many of those were minority?

SEN. FRASER: I'm not advised.

SEN. SHAPLEIGH: How many of those were Democrats?

SEN. FRASER: I'm not advised. I don't know that they asked him what their --

SEN. SHAPLEIGH: Well, do you have any
Case 1:12-cv-00128-RMC-DST-RLW Document 210-1 Filed 06/20/12 Page 108 of 248

witness here today who can confirm how many of those
were minorities and how many were Democrats?

SEN. FRASER: I have not called a
witness, you know, for that. It's possible that -- we
have two people from the registrar's office in
Houston, and I know Houston was one of the places that
had a problem. And I would suggest that you ask the
expert witness from the Houston registrar's office. I
suspect they probably would have some information.

SEN. SHAPLEIGH: Well, I think this
issue of that investigation is the proof that we have
of how widespread fraud is in the State of Texas. I
think we have a perfect right to ask those questions.
And I want to know if you as a chairman will
participate with us in getting a live witness that we
can ask about those cases on this floor?

SEN. FRASER: And I'm being advised --
let me just confirm.

(Brief pause)

I'm being advised that the Attorney
General's office is willing to answer your question,
to clarify the questions you have.

SEN. SHAPLEIGH: And will that Attorney
General bring us, with time to review the file on each
of these 13 indictments so that we can determine for
ourselves and can effectively cross-examine him or her on the real nature of these cases? Will we have that file in time to really do the job we need to do to get at the heart of this massive voter fraud that we have in the State of Texas?

SEN. FRASER: You know, I don't think that the indictments on those -- we're in a case that the ability to game the system by representing yourself as someone else. I've got one area of the voter fraud in this that we're addressing, and it is voter ID, identifying that when you walk in for in-person voting, you are who you say you are.

SEN. SHAPLEIGH: In connection with the indictments brought, even your number, which differs from my number, did a single one, would a single indictment have been resolved by this photo ID or were they all mail-in ballots or other issues?

SEN. FRASER: I am not advised. My goal on this is to look at the law itself, of implementing, people identifying themselves for the ability to vote. We were looking at the Indiana law that is a strict photo ID, the Georgia law that is a strict photo ID that have been in place, Indiana for two election cycles, Georgia for the last. And we're going to hear from expert witnesses of how that not only didn't
suppress voting, it actually increased voting because it increased voter confidence.

SEN. SHAPLEIGH: So are you aware of any other investigations, other than what Attorney General Abbott has done here in Texas, with respect to voter fraud?

SEN. FRASER: I'm not advised.

SEN. SHAPLEIGH: So if we hear from this witness that's going to come here and share with us the nature and extent of voter fraud in the State of Texas, and not a single one relates to photo ID, will that make a difference in the way you prosecute this bill?

SEN. FRASER: Again, we're going to have the expert witnesses come forward. But I think what you're going to hear is the case -- or the example that I used with Sen. Watson of someone stealing his identification, going and voting and, you know, representing themself as Kirk Watson and being able to vote.

I think what you're going to hear -- and I don't want to put words in the mouth of the Secretary of State or the other witnesses -- but I think you're going to find that it is extremely hard to identify and even harder to prosecute those cases,
because we have a huge flaw in Texas law. We have not
given them the ability to even identify that someone
is breaking the law. And if you can't identify
they're breaking the law, then prosecuting that person
becomes even harder. So I think the point that's
going to be made through the testimony on this is that
we have a huge deficiency in current law in
identifying voters when they come for in-person
voting.

SEN. SHAPLEIGH: You had mentioned and
laid out some statistics on those that have photo IDs
in the State of Texas and said that your information
came from the DPS. Is that correct?

SEN. FRASER: I don't think I
represented anything came from DPS. I think the data
we had I represented came from the Secretary of State.

SEN. SHAPLEIGH: Okay. Are you aware of
any other data from Texas with respect to those that
hold photo IDs that are of voting age?

SEN. FRASER: Help me with that. I --

SEN. SHAPLEIGH: Well, for example, are
you aware of, say, the Texas Conservative Research
Institute's finding -- the Texas Conservative
Coalition Research Institute finding that 37 percent
of Texas residents over the age of 80 do not have a
driver's license?

(Brief pause)

SEN. FRASER: I'm not advised. And I don't think, unless they called every one of those people, they could verify that. My mother is over 80 and she still has a driver's license, I believe, but she votes by mail.

SEN. SHAPLEIGH: So which is the number, the number that the Texas Conservative Coalition Research Institute has for us, 37 percent don't have a driver's license, or the number that you're bringing to us?

SEN. FRASER: I don't think I brought anything forward.

SEN. SHAPLEIGH: Okay. Thank you, Senator. I look forward to another --

SEN. FRASER: You're cutting me short. You told me that I would be here till midnight on your questionings.

SEN. SHAPLEIGH: We've still got eight hours.

SEN. FRASER: That's enough time.

SEN. SHAPLEIGH: We're ready.

SEN. FRASER: Thank you.

SEN. SHAPLEIGH: Thank you.

SEN. ZAFFIRINI: Thank you, Mr. President.

SEN. FRASER: Is this a test to see if I really have this information in the books?

SEN. ZAFFIRINI: Yes, it is. I'm going to ask you questions about Page 218, Line 4, and what it's on.

SEN. FRASER: The book that I shared with you --

SEN. ZAFFIRINI: Yes.

SEN. FRASER: -- and showed you all my data.

SEN. ZAFFIRINI: It's a wonderful book, and I congratulate you and your staff for developing such thorough information, very impressive. My staff is not happy to know about it, however.

Sen. Fraser, you were the Senate sponsor of House Bill 218 that never made it to the Senate floor in 2007. Correct?

SEN. FRASER: That is correct. I was the sponsor of the --

SEN. ZAFFIRINI: Do you know the main differences, if any, between the bill that you sponsored in 2007 and the bill that we are considering
today regarding voter ID?

SEN. FRASER: I'm going to clarify with staff. I think I know the answer, but . . .

(Brief pause)

I'm being advised that the bill that we're filing is very, very close. There are very, very small changes in the bill.

SEN. ZAFFIRINI: Well, that's what I thought. I looked at the two bills and I looked at the two bill analyses and I looked at the two fiscal notes. But what surprised me more than anything is that the bill that we considered in 2007 had a fiscal note of $671,000 in each year over a five-year period, but the fiscal note for the bill that we are considering today says "No Fiscal Implications."

Could you explain the difference in the fiscal note?

SEN. FRASER: Good research. And it's exactly the same thing that I -- I looked at the two. I asked the same question. We called about the fiscal note. Evidently in the research of this -- and again, we've got an expert witness that is sitting -- or they were sitting right over here, the Secretary of State. I think they will answer that. And I think the answer is, again, I don't want to put words in their mouth, but I think in doing more research, they found out
that a lot of these things are available for them to
do within their current budget, and it does not create
additional expense.

SEN. ZAFFIRINI: Well, I certainly do
want to follow up with the LBB to ask them
specifically, since they write the fiscal notes, why
such an enormous difference. It's just amazing. I
would like the name of the person who developed the
new fiscal note. I might want to work with that
person for my bills.

SEN. FRASER: Well, as thorough as you
are on finance, because I've sat there and watched
you, and you do a wonderful job in looking at these.
And I know exactly the questions you'll be asking in
Finance, and I would encourage you to do that. But I
also, being a former member of Finance, did the same
thing, asked the questions. And my response back was,
is that after further examination, they realized that
this had no fiscal impact.

SEN. ZAFFIRINI: I'll be asking them to
look at some of mine further and see what they can
come up with.

SEN. FRASER: Thank you, Senator.

SEN. ZAFFIRINI: Thank you, Senator, for
that particular answer. But looking at the bill --
and Senators Watson and Shapleigh touched upon these
issues -- there will be some costs to the local
officials, will there not -- the posting of signs, the
training will be provided by the state, but the local
officials will have to engage in a lot of
verification, participate in that training, the
posting of signs and development of material, or will
the state cover that expense?

SEN. FRASER: I expect that is; correct,
is that, you know. But that also is not unusual in
that the local elected officials, any time there is
something for notification, they do that. And so it's
not -- I'm being told not unusual, wouldn't be
expected.

SEN. ZAFFIRINI: There was much
discussion yesterday and today and even before that,
including by Sen. Duncan and Sen. Van de Putte,
Sen. West and others regarding the need for each side
to make a record, and then each side, those who
support this legislation and those who oppose it are
making a record for two purposes: No. 1, because a
lawsuit is expected; No. 2, because we will be dealing
with challenges before the Department of Justice.
Would you agree with that?

SEN. FRASER: You know, again, you're