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PROCEDINGS

TUESDAY, MAY 10, 2009

(5:50 p.m.)

INVITED TESTIMONY

TESTIMONY BY HANS VON SPAKOVSKY

MR. von SPAKOVSKY: Thank you, Mr. Chairman, senators. I appreciate the invitation to testify here today. My name is Hans von Spakovsky. I'm a legal scholar at the Heritage Foundation, although the opinions here today are my own.

Just by background, I've got extensive experience in voting and election issues. I spent four years at the Department of Justice as a voting counsel. I spent two years on the Federal Election Commission. I also spent five years as a member of a county election board in Atlanta, Georgia, in Fulton County, which is the largest county in the state, and it's a county that's about half African-American.

Guaranteeing the integrity of elections requires having security throughout the entire election process, from the voter registration to voting in the polls on Election Day to counting the ballots. I doubt any of you here would think it would be a good idea to give worldwide Internet access to the computers that are in a county election department.
that tabulate the vote.

Requiring someone to authenticate their identity in the polling place is part and parcel of the same kind of security. Every illegal vote steals a vote from a legitimate voter. And voter ID doesn't just prevent impersonation fraud at the polls, it also can prevent people from voting under fictitious voter registrations and also double voting by individuals who are registered in more than one state.

Voter fraud does exist, and criminal penalties imposed after the fact are not sufficient to protect against it. That claim was, in fact, raised in the Indiana case, and the Supreme Court said that despite such criminal penalties, there are flagrant examples of such fraud that have been documented throughout this nation's history by respected historians and journalists. They not only demonstrate the risk of voter fraud is real, but it could affect the outcome of a close election.

You've had some questions about why have there not been more prosecutions of voter impersonation. Well, as the Seventh circuit said in the Indiana case, it's hard to prosecute something when you don't have the tool to detect it, voter ID. However, if you want a good example of
1. This, I wrote a paper last year for the Heritage
Foundation that detailed a publicly released state
grand jury report in New York City, 1984, which
detailed a successful and undetected 14-year
conspiracy in which impersonation fraud was carried on
at the poll and thousands of fraudulent ballots were
cast in not just state legislative primary elections
but also in congressional elections.

   Crews of from five to eight people were
recruited and sent from polling place to polling place
where they voted in the names of legitimate voters,
people who were dead but still on the registration
lists, individuals who had moved and also under the
names of fictitious voter registration names that had
been successfully registered.

   According to the grand jury, the advent
of mail-in registration was a key factor in this
fraud. It could have been easily stopped if New York
had had voter ID. In recent elections, as you know,
thousands of fraudulent voter registration forms were
detected by election officials. But given the minimal
screening efforts in many election jurisdictions,
there is no way to know how many others slipped
through. In states with ID, election officials --
without ID, election officials have no way to prevent
bogus votes from being cast.

The problem of double voting -- well, I'll give you an example of that. In the Indiana Supreme Court case, the League of Women Voters filed an amicus brief against the law. And in it they illustrated an Indiana voter, an elderly woman who they said had had problems voting. The local paper went and interviewed her.

The reason she had had problems voting, she tried to use a Florida driver's license when she went to her polling place in Indiana. Not only did she have a Florida driver's license, she was registered to vote in Florida. In fact, she owned a home in Florida and had claimed a homestead exemption which, as you know, you can only do if you are a resident of the state. So the law actually worked to prevent someone who could have voted twice without detection.

I don't mean to single out Texas. But just like Indiana, New York and Illinois, Texas has a long and unfortunate history of voter fraud. In the late 1800's, for example, Harrison County was so infamous that the phrase "Harrison County methods" became synonymous with election fraud. Box 13 has already been mentioned. The point is that there are
individuals who are willing to break the law to try to steal an election.

I don't claim that there is massive voter fraud in Texas or elsewhere. In fact, I'm a former election official, and I think most of our elections are run pretty well. But the potential for abuse exists, and there are many close elections that could turn on just a handful of votes. And there are enough incidents of voter fraud to make it very clear we should take steps to stop that.

Now, the biggest thing I've heard today is that voter ID will suppress the votes of voters, particularly the poor or the elderly. That is untrue. Social science research shows that that's not the case. And the actual election results in the two states with the strictest voter ID in the country show that is not true.

The Heritage Foundation released a study in September 2007 that looked at voter turnout in every state in the country in the 2004 election, comparing those states who had voter ID to those states who do not. They found that voter ID laws do not reduce the turnout of voters, including African-Americans and Hispanics, that those voters were just as likely to vote in states with ID as in states where
just their name was asked.

A study by professors at the University of Delaware and Nebraska-Lincoln examined data from the 2000, 2002, 2004 and 2006 elections. The study found that voter ID laws do not affect turnout, including across racial lines, ethnic lines and socioeconomic lines. The study concluded -- and I'll give you their quote -- the "concerns about voter ID laws affecting turnout are much ado about nothing."

A professor at MIT, as part of the CalTech Voting Project, did a survey of 36,000 individuals to see what their Election Day experience was like. Overwhelming support for voter ID. Only 23 individuals who had a problem voting because of voter ID. And there was no indication in the survey if they were actually eligible voters.

A lot of talk has been here about election results in Georgia and Indiana. In Georgia, there was record turnout in the 2008 presidential primary after the voter ID law went into effect, a million more voters than in 2004, when there was no voter ID law in effect.

The number of African-Americans voting in the 2008 presidential primary doubled from 2004 when there was no voter ID law in effect. In fact,
there were 100,000 more votes in the Democratic Primary in Georgia than in the Republican Primary. The general election in Georgia, one of the strictest voter ID laws in the country, largest turnout in its history. Democratic turnout was up 6.1 percentage points from the 2004 election when there was no voter ID. Overall turnout in Georgia was 6.7 percentage points higher than in 2004, the second highest increase of any state in the country.

The Georgia law has been upheld in every federal and state court. And, in fact, the Georgia judge, who is a former Democratic legislator appointed by Jimmy Carter, pointed out that in two years of litigation, none of the organizations who sued, including the NAACP, could come up with a single witness, a single individual who could not vote because of the voter ID requirement.

In Indiana, Democratic presidential preference primary last year, Democratic turnout quadrupled from the 2004 election. In fact, it was up 8.32 percentage points from 2004, the largest increase in Democratic turnout of any state in the country. And the Supreme Court said, "Indiana has the strictest voter ID law in the country."

We are only one of about 100 democracies
that do not require photo ID. Our southern neighbor, Mexico, which has a much larger population in poverty, requires both a photo ID and a thumb print when people go to vote. Since they put that provision in, in the mid-1990s, turnout has increased in their elections.

Requiring voters to authenticate their identity is a perfectly reasonable and easily met requirement. It's supported by the vast majority of voters. All the polling data shows that. And it protects the integrity and reliability of the electoral process, as the Supreme Court said, and it also maintains the confidence of individuals in the security of their elections.

And I'm done, Mr. Chairman.

SEN. DUNCAN: Thank you, Mr. von Spakovsky. Before I entertain any questions, you have written testimony. Do you wish to submit that into the record?

MR. von SPAKOVSky: I would like to submit it. I believe I gave it to the Clerk, Mr. Chairman.

(Exhibit No. 14 marked and admitted)

SEN. DUNCAN: Okay. We have it marked as Exhibit 14.

Members, are there any questions for
Mr. Von Spakovsky?

Sen West.

SEN. WEST: Will we be asking questions from the chair or standing up?

SEN. DUNCAN: Standing up.

QUESTIONS FROM SENATE FLOOR

SEN. WEST: Okay. Sir, let's talk about your background. We've met before, back in 2003 I think it was. As it relates -- are you coming as a neutral and detached witness or have some sort of bias one way or the other for this particular issue?

MR. von SPAKOVIKY: I'm not quite sure how to answer that question.

SEN. WEST: Well, let me ask the question this way: You are a former Republican chair, are you not?

MR. von SPAKOVIKY: I was a county party Republican chair over 10 years ago.

SEN. WEST: Okay. Have you authored studies or position papers on requiring voter IDs at polling locations?

MR. von SPAKOVIKY: I have. In fact, I wrote an article for a Texas Law Review on it.

SEN. WEST: Have you authored articles on requiring the verification of social security
numbers of voters?

MR. von SPAKOVSKY: I have. And, in fact, that's now a federal requirement under the Help America Vote Act.

SEN. WEST: Have you authored articles on eliminating no-fault absentee voting?

MR. von SPAKOVSKY: I believe I have, yes.

SEN. WEST: And what's the rationale -- what is your rationale for no-fault absentee voting? And let's define it first of all. As I understand no-fault absentee voting, that basically means that a person should not be able to give any reason not to -- any reason in order to cast an absentee ballot. So a person who may very well have business outside of the county on Election Day, if you had your way, they would not be able to vote. Correct?

MR. von SPAKOVSKY: That's incorrect, Senator.

SEN. WEST: Okay. Then what is the elimination of no-fault absentee voting?

MR. von SPAKOVSKY: There are some states -- in most states, you have to have a reason to vote absentee: You're disabled, you're elderly, you're going to be out of town on business. I
completely agree with those, plus the fact if you're a military voter. There are some states where you don't have to have any reason to vote absentee.

SEN. WEST: Is Texas one of those states?

MR. von SPAKOVSKY: I'm not sure what the rule is in Texas.

SEN. WEST: If we were, then you would want to eliminate that. Right?

MR. von SPAKOVSKY: Well, there are two things there, Senator. The first is that absentee ballot fraud is one of the biggest sources of voter fraud. In fact, I've written a paper about that. And, second, there's more than one study -- in fact, one by the Center For the Study of the American Electorate which indicates that states that have put in no-fault absentee balloting, in fact, it has possibly hurt the turnout of their voters.

SEN. WEST: In terms of other articles that you have worked on, the white papers that you have written eliminating motor voter registration --

MR. von SPAKOVSKY: That's incorrect.

SEN. WEST: Okay. You're not for eliminating motor voter registration?

MR. von SPAKOVSKY: I think there are
problems with mail-in voter registration, but I also think that the provisions of motor voter which require you to be able to get registered to vote when you go to get your driver's license or when you go to a public assistance office, I think those are very good provisions.

SEN. WEST: What about the requirement of two witnesses on a notary to sign an absentee ballot, are you for? Have you advocated that or what?

MR. von SPAKOVSKY: I believe that because of the problems with absentee ballots and voter fraud, that having either a witness or a notary for an absentee ballot is a good idea.

SEN. WEST: You have indicated that there's numerous studies that show that there has been no impact, negative impact on the minority vote in several states, and you've alluded to some 2008 elections. Let me put a pin in that for a second. Have you been the author of any of the studies that you have mentioned as relates to voter suppression?

MR. von SPAKOVSKY: To voter suppression?

SEN. WEST: Right -- oh, I'm sorry. I should not have said that.

MR. von SPAKOVSKY: I --
SEN. WEST: I should not have said voter suppression. I apologize. Have you been the author of any studies that deal with the impact of voter ID on minority votes?

MR. von SPAKOVSKY: Yes.

SEN. WEST: And which studies have those been?

MR. von SPAKOVSKY: I wrote a paper that looked at the State of Georgia and some other states that had voter ID laws. And I looked at turnout of African-American voters, both before the law went into effect and after the law went into effect.

SEN. WEST: In the State of Georgia?

MR. von SPAKOVSKY: And, yes, I looked at the State of Georgia.

SEN. WEST: For what year -- years?

MR. von SPAKOVSKY: I started with the first voter ID law that went into effect in Georgia in 1999, which was then amended later on, and I looked at the effects of all of those laws.

SEN. WEST: Okay. Did you also look at 2008?

MR. von SPAKOVSKY: The paper was written before the 2008 election.

SEN. WEST: Have you looked at any --
have you been the author of any studies that looked at
the 2008 election?

MR. von SPAKOVSKY: I've written several
articles about that, yes, sir.

SEN. WEST: As relates to those
articles, did you conclude that -- was that in the
State of Indiana or Georgia or what?

MR. von SPAKOVSKY: In some of the
articles I've written, I've mentioned election results
in both Indiana and in Georgia.

SEN. WEST: And so it's your testimony
that voter ID had no negative impact on the minority
vote in either one of those states in 2008?

MR. von SPAKOVSKY: That's what the
facts and figures from the election show.

SEN. WEST: Did you take into
consideration who the candidates were at that time in
Indiana and Georgia. And --

MR. von SPAKOVSKY: Yes, Senator.

SEN. WEST: -- did that have an impact?
Were you able to check out the influence of President
Barack Obama being on the ballot?

MR. von SPAKOVSKY: Senator, turnout was
up all over the country, particularly in the minority
community, because of Sen. Barack Obama. The point,
however, is that the two states with the strictest voter ID laws in the country had turnout that was records and ahead of other states where turnout was also up, because of Barack Obama being on the ballot; and, yet, those states don't have voter ID. If the claim, which I know you believe is true, that voter ID --

SEN. WEST: You don't know what I believe, first of all.

MR. von SPAKOFSKY: If people are going to claim that voter ID suppresses the vote of minority voters, then why would, in Georgia, they have a record turnout, for example, in the Democratic turnout where, you know, 95 percent of African-Americans there vote, in a state where the African-American population is about 26-27 percent; and, yet, they have record turnout. If, in fact, voter ID --

SEN. WEST: Let me ask you -- let me finish --

MR. von SPAKOFSKY: May I answer the question?

SEN. WEST: Well, hold on. Let me -- answer my question. I would appreciate it. All right. The question is real simple. Did you consider the influence -- in coming to the conclusion that you
did on the studies, did you consider the influence that President Barack Obama had on energizing the Democratic base in both of those states?

MR. von SPAKOVSKY: Yes, sir, I did.

SEN. WEST: And were you able to factor that out before you came up with your conclusions, by using a valid statistical model? And, if so, what was that statistical model?

MR. von SPAKOVSKY: I did not do a statistical analysis. I used figures put out by Curtis Gans at American University who has election return figure from every state in the country.

SEN. WEST: So your study -- and I have not read your study. So your study was a compilation of election results? You --

MR. von SPAKOVSKY: I wrote an article in which I looked at the election results all around the country. And those election results, as reported by American University, indicated that Indiana, for example, had the largest increase in Democratic turnout of any state in the country from the --

SEN. WEST: I understand that; I understand exactly what you're saying. But I'm just trying to make certain I understand the study. You took the results of the elections and then used that
in order to craft, analyze it and then craft a conclusion based on those election results. Is that what you're telling me?

MR. von SPAKOVSKY: Yes, sir.

SEN. WEST: Okay. So how did you factor in the influence that then Sen. Barack Obama had on energizing the election base?

MR. von SPAKOVSKY: The point, Senator, is that the State of Indiana has the strictest photo ID law in the country; and, yet, they had the largest increase in turnout in the Democratic primary of any state in the country. So if, in fact, that photo ID laws was going to suppress the vote of minority voters, they would not have had such a huge increase in that state.

SEN. WEST: So you have not had an opportunity to look at it in an election where the Democratic base isn't as energized as it was with Barack Obama to determine whether or not it has any impact?

MR. von SPAKOVSKY: Senator, I think, in fact, one of the studies that I mentioned, which there was a study that was done in Missouri looking at the 2006 election which, as you know, was an off-year election. Barack Obama was not on the ballot. And,
in fact, in 2006, when the photo ID law in Indiana was in -- was finally in effect, not only did turnout go up two percent, but the only statistically significant -- let me find this. Here we go.

In fact, this is a quote from the study.

"There is no evidence that counties with higher percentages of minority, poor, elderly or less educated populations suffered any reduction in voter turnout." This was in 2006. In fact, quote, "The only consistent and statistically significant impact of photo ID in Indiana is to increase voter turnout in counties with a greater percentage of Democrats relative to other counties."

SEN. WEST: Now, let me ask you this: Isn't it a fair statement that there are those in academia that disagree with your conclusions?

MR. von SPAKOVSKY: There may be, yes.

SEN. WEST: You don't know of any?

MR. von SPAKOVSKY: There may be some studies that do. Most of the studies say that it doesn't --

SEN. WEST: So there are those that disagrees with your conclusions. Is that correct?

MR. von SPAKOVSKY: I'm sure there's always people that --
SEN. WEST: Are there some social scientists that disagree with your conclusions, sir?

MR. von SPAKOVSKY: You'll have to look that up, Senator.

SEN. WEST: Okay.

SEN. DUNCAN: Senator, y'all are talking over each other a little bit. So if you could allow the witness --

SEN. WEST: And I apologize.

SEN. DUNCAN: -- room before you --

SEN. WEST: We've got two lawyers up here. Yes, sir.

All right. So there are individuals of noted reputations in academia that disagree with your conclusions?

MR. von SPAKOVSKY: Senator, I have spoken about and testified about the various studies that I have seen, which I think are valid studies which show that there is no effect.

SEN. WEST: Sir, that was not the question. The question was, is do you know of persons in academia that disagree with your conclusions?

MR. von SPAKOVSKY: There may be, yes.

SEN. WEST: So the answer to the question is yes, there are persons that disagrees with
MR. von SPAKOVSKY: I'm sure there are.

SEN. WEST: Okay. Very good. Now, as it relates to the issue of retrogression, help me walk through this. Which should we be considering in terms of whether or not this particular piece of legislation is, in fact -- you have been at the Department of Justice. Correct?

MR. von SPAKOVSKY: Yes, sir. I worked there for four years as a career lawyer.

SEN. WEST: Okay. You have had to overrule some of the professional staff sometimes when they come to their different conclusions than you otherwise came to. Is that correct?

MR. von SPAKOVSKY: I did not overrule anyone. I made recommendations to the Assistant Attorney General on matters.

SEN. WEST: You've had to make recommendations counter to recommendations made by you -- made to you by staff that was reporting to you, though. Isn't that correct?

MR. von SPAKOVSKY: Yes.

SEN. WEST: Okay. And some of it has been in the area of voters' right -- most -- oh, all of it has been in the area of votes' rights. Is that
correct -- specifically Section V?

    MR. von SPAKOVSKY: Sir, that is
    incorrect. I was the voting counsel. All I worked on
    were voting issues.

    SEN. WEST: That's exactly right. Okay.

    Now, in that capacity, what would you advise us -- I'm
    going to say take your hat off as a Republican, take
    your hat off as any affiliation law. What specific
    advice would you give this body as it relates to
    analyzing the legislation before us?

    MR. von SPAKOVSKY: Well, under
    Section 5, you use the retrogression standard, which
    means that you can't do something that's going to have
    a disparate impact on minority voters. And, you know,
    everything I've seen, certainly based on the Georgia
    legislation, which is stricter than this, there is no
    disparate impact.

    SEN. WEST: And so there is no disparate
    impact. Is that what you're saying --

    MR. von SPAKOVSKY: Correct.

    SEN. WEST: -- based on the legislation?

    Okay. Now, let me ask you this: What have you seen
    that leads you to that conclusion?

    MR. von SPAKOVSKY: The Georgia bill --
    the Georgia legislation, in fact, is stricter
legislation. It has fewer IDs that meet the requirements of the law. That law did not have a retrogressive impact. In fact, the election results show that clearly. Arizona is another state that put in a voter ID law. It also was pre-cleared by the Justice Department. And it also was recently upheld by a federal district court who said that it did not violate any voting right statutes and was perfectly constitutional.

SEN. WEST: So then your comment about what we're doing here is not going to be retrogressive is based on the Georgia statute. Is that what you're saying?

MR. von SPAKOVSKY: It's based on my experience in this area, all the studies I've seen, the results of elections, that this statute is not going to be shown to be retrogressive.

SEN. WEST: Let me ask you this: Some of the career -- help us understand the Justice Department, specifically the voting rights section. You have career employees there. Right?

MR. von SPAKOVSKY: Yes. I was a career employee there.

SEN. WEST: Okay. And are some of those employees still there that were with you at the time
that you were there?

MR. von SPAKOVSKY: I'm sure there are, yes.

SEN. WEST: Okay. Some of those employees that you've had to overrule their analysis, are they still there?

MR. von SPAKOVSKY: I don't know. I haven't worked there since 2005, so I really don't know who is still there.

SEN. WEST: Okay. All right. But it's a different Justice Department -- right? -- Department of Justice. Right?

MR. von SPAKOVSKY: The career staff at the Justice Department -- the Justice Department is made up of around 99 percent career staff. Political appointees are a very small percentage. So from year-to-year, administration-to-administration, the career staff, with some turnover, pretty much stays the same.

SEN. WEST: How long were you in the Department of Justice?

MR. von SPAKOVSKY: Four years.

SEN. WEST: Four years. When did you go into the Department of Justice?


SEN. WEST: And what position was that?
MR. von SPAKOVSKY: I was a trial attorney in the Civil Rights Division.

SEN. WEST: In the Civil Rights Division. Okay. Thank you very much, sir.


SEN. SHAPLEIGH: Thank you, Mr. Chair.

Mr. Spakovsky, I would like to go over some testimony that you just laid out with your handout here that we have. I'm looking at Page 3 specifically. And when you're talking about Texas, as far as I can tell, in connection with the problem of voter fraud here, you're saying in the late 1800's, Harris County was infamous for massive election fraud such that "Harrison County Methods" became synonymous with election fraud, and then Ballot Box 13 in Lyndon Johnson's 1948 race, to reports of illegal aliens in Bexar County. What reports are you referring to on illegal aliens in Bexar County?

MR. von SPAKOVSKY: There were newspaper reports indicating that -- I believe the clerk there had found individuals who were not U.S. citizens who had both registered and voted in elections there.

SEN. SHAPLEIGH: And were any cases brought in connection with those newspaper reports, to your knowledge?
MR. von SPAKOVSKY: I don't know, Senator.

SEN. SHAPLEIGH: So what you represent here as illegal aliens voting and risking criminal prosecution, you're telling us now you don't know whether anything came of that at all?

MR. von SPAKOVSKY: I don't know what the end results were of the investigations there.

SEN. SHAPLEIGH: Do you know anything else about Texas voter fraud allegations, other than what you've laid out in your report --

MR. von SPAKOVSKY: I believe one of your -- I've read testimony by a Mr. Bettencourt who I believe was in -- may have been in Harris County who testified at a House committee meeting hearing in Washington about finding individuals who were not U.S. citizens who had registered and voted in elections in his county.

SEN. SHAPLEIGH: Are you aware of the investigation done here by the Attorney General of the State of Texas in 2006?

MR. von SPAKOVSKY: No, sir, I have not done a detailed study of that.

SEN. SHAPLEIGH: Would it surprise you, with what you're saying in this report, that not a
single prosecution brought in this state would have
been solved by this voter ID; that is, mail-in ballots
and other issues were the issues at the root of these
indictments and not a single case has been brought in
the State of Texas on vote fraud that photo ID would
solve? Would that surprise you?

MR. von SPAKOVSKY: No. As I said,
Senator -- and I refer you again to the Supreme Court
case -- as they pointed out, it's very hard to detect
a problem like that if you don't have the tool
necessary to detect it, which is photo ID.

SEN. SHAPLEIGH: Let me go to your
career. You come here from The Heritage Foundation.
Is that correct?

MR. von SPAKOVSKY: That's correct, sir.

SEN. SHAPLEIGH: And would you say
you're here as a fair and balanced witness whose
testimony is designed to move us to a non-partisan
correct decision that would serve the State of Texas
in this matter?

MR. von SPAKOVSKY: As I said before,
I'm here testifying on my own behalf, not on behalf of
The Heritage Foundation. And I think all of the
evidence on photo ID indicates that it should be a
bipartisan solution, because not only can it prevent
voter fraud but it does not hurt turnout.

And, in fact, I believe in Indiana, for example -- again, the state with the strictest photo ID law in the country -- they for the first time in I don't know how many decades actually voted for a Democratic presidential candidate. So it clearly had no effect and it may have helped the Democratic Party in that state.

SEN. SHAPLEIGH: So in connection with your reputation as you come here, you're coming, in your words, as a fair and balanced witness?

MR. von SPAKOFSKY: I believe so, Senator, yes.

SEN. SHAPLEIGH: Who is Joseph Rich?

MR. von SPAKOFSKY: He was former Chief of the Voting Section who now works for the Lawyers' Committee for Civil Rights, which is a liberal advocacy organization.

SEN. SHAPLEIGH: So he was the Chief of the Voting section. He was a career, as you describe it, attorney in the Justice Department and Chief of the Voting Section from 1999 to 2005. Is that correct?

MR. von SPAKOFSKY: He was a career lawyer, as I was a career lawyer at the section.
SEN. SHAPLEIGH: Who is Robert Kengle?

MR. von SPAKOVSKY: He is also a former career lawyer.

SEN. SHAPLEIGH: And he was Deputy Chief of the Voting Section, 1999 to 2005. Correct?

MR. von SPAKOVSKY: I don't remember the exact years. I know he was a career lawyer there.

SEN. SHAPLEIGH: And Jon Greenbaum, Senior Trial Attorney, Voting Section, 1997 to 2003, your colleague when you were at the Department of Justice. Correct?

MR. von SPAKOVSKY: Mr. Greenbaum was a lawyer for the Lawyers' Committee for Civil Rights and was the lawyer who brought the lawsuit in Georgia against the photo ID law which was eventually completely dismissed by the federal court there.

SEN. SHAPLEIGH: But he was your colleague in the Department of Justice. "Yes" or "No"?

MR. von SPAKOVSKY: He was a trial lawyer there.

SEN. SHAPLEIGH: When you were there?

MR. von SPAKOVSKY: At some point, yes.

SEN. SHAPLEIGH: And David J. Becker, Senior Trial Attorney, Voting Section, 1998 to 2005,
your colleague at the Department of Justice. "Yes" or "No"?

MR. von SPAKOVSKY: He was a trial attorney there, too.

SEN. SHAPLEIGH: Bruce Adelson, Senior Trial Attorney, Voting Section, 2000 to 2005, your colleague at the Department of Justice?

MR. von SPAKOVSKY: He was a trial attorney there, yes.

SEN. SHAPLEIGH: Toby Moore, Voting Section, 2000 to 2006, Political Geographer, Department of Justice?

MR. von SPAKOVSKY: Yes.

SEN. SHAPLEIGH: Now, you were nominated to serve, I believe, for the Federal Election Commission, were you not?

MR. von SPAKOVSKY: I was.

SEN. SHAPLEIGH: Did these attorneys deliver a letter to the Chairman of that committee, Dianne Feinstein, in connection with your nomination?

MR. von SPAKOVSKY: They did, Senator.

And I wrote a response to that letter which is on file at the committee, as is their letter, because, frankly their letter was filled with misrepresentations, and it had a lot of things in it that were not true and...
which were proveably not true about the administration
of the Civil Rights Division.

SEN. SHAPLEIGH: Well, if you have that
letter, we would I think at this point like to see it,
because I'm about to go through their letter where
one, two, three, four, five, six of your colleagues
signed a letter -- I think this is an unprecedented
act in the Department of Justice to sign a letter on a
nomination of a colleague that works with them in the
Voting Section of the Department of Justice. And I
want to quote from this.

"We are deeply disturbed that the
tradition of fair and vigorous enforcement of this
nation's civil rights laws and the reputation for
expertise and professionalism of the Division and the
Department has been tarnished by partisanship. Over
the past five years, the priorities of the Voting
Section have shifted from its historic mission to
enforce the nation's civil rights laws without regard
to politics, to pursuing an agenda which placed the
highest priority on the partisan political goals of
the political appointees who supervised the Section.
We write to urge you not to reward one of the
architects of that unprecedented and destructive
change with another critical position enforcing our
country's election laws."

Were they talking about you in this letter?

MR. von SPAKOVSKY: Senator, that letter was full of misrepresentations and, frankly, outright lies.

(Simultaneous discussion)

MR. von SPAKOVSKY: Senator, I'll be glad to talk to you about voter ID. But, you know, I'm a lawyer. And one thing I have found in the courtroom is that, quite frankly, when the lawyer on the other side has neither the facts nor the law on their side, that's when they usually resort to personal attacks.

(Applause)

SEN. DUNCAN: (Raps gavel)

SEN. SHAPLEIGH: Mr. von Spakovsky -- and, Mr. Chair, I would ask if we could have a direction to the witness to answer the questions presented. The simple question was, "Is the person they're referring to in this letter you?"

MR. von SPAKOVSKY: And as I told you, Senator, I wrote a full response to that letter pointing out all of the inaccuracies and misrepresentations in that letter.
SEN. SHAPLEIGH: So this is about you, this is directed at your behavior in that Department of Justice? Does it say that?

MR. von SPAKOVSKY: It is a letter about a fictional person that they say is me but is not.

SEN. SHAPLEIGH: It is a fictional person that they worked with for four years, but it's not you. Is that what you're saying?

MR. von SPAKOVSKY: I'm saying, Senator, that that letter was written by individuals who now work for very liberal advocacy groups, one of them, for example, working for a group that lost in Federal Court in Georgia when it sued over voter ID law that they didn't like. And, you know, if that's a reflection of his legal judgment on matters like that, I think that says a lot about the inaccuracies in that letter.

SEN. SHAPLEIGH: Well, I'm just going to take it that they're talking about you. "After careful review" -- I'm now on Page 3 -- "of the Georgia voter ID law, career staff responsible for the review came to a near unanimous decision, consistent with the precedent established by the Department in previous reviews; that the Georgia provision would negatively affect minority voting strength. Four of
the five career professionals on the review team agreed. The one who did not have [almost] no experience in enforcing §5 and had been hired only weeks before the review began through the political hiring process described" in this letter. "The recommendation to object to the law, detailed in a memo exceeding 50 pages was submitted on August 25, 2005. The next day, Georgia submitted corrected data on the number of individuals who had state-issued photo identification. The career review team was prevented by Mr. von Spakovsky from analyzing this data and incorporating the corrected data into their analysis. Instead, there was an unnecessary rush to judgment and the law was summarily precleared on August" the 25th, the day after their monologue was delivered to you. The law was pre-cleared by you the same day the corrected data had been submitted. "Subsequent analysis of this data by a Georgia political scientist revealed that hundreds of thousands of voters did not have the required voter ID, a disproportion number of whom were poor, elderly and, most importantly for the Voting Rights Act review, minorities. In short, this data provided further evidentiary support for the objection recommended by the professional staff. Subsequently,
a federal court in Georgia found that this law
violated the poll tax provision of the Constitution."
Are they referring to actions taken by
you on August the 25th and 26th of 2005?
MR. von SPAKOVSKY: Senator, there are
so many facts wrong and so many misrepresentations in
that letter, and you've also gotten a lot of other
facts incorrect, that it would take me at least
probably half an hour to answer everything you've got
wrong in that case, the more important of which is
that the career Chief of the Voting Section who was a
30-year veteran of the Department of Justice, someone
who had been enforcing the Voting Rights Act and
filing suits in southern states like Mississippi and
Alabama for 30 years, sent a recommendation that said
that the law should be approved, that there was no
evidence of retrogression.
And I would be happy to give you some of
the data, Senator. For example, the Department of
Driver Services, which is I believe the same as the
department here that gives your driver's license, has
showed that there were 6.5 -- 6.4 million individuals
in Georgia who had driver's licenses and photo IDs.
There were only 4.5 million registered voters.
That department had racial data. For
60 percent of the cardholders, they found that 28 percent of the individuals who held driver's licenses were African-American, which was higher than the black percentage of the voting age population in Georgia, indicating that African-Americans in Georgia held driver's licenses at a slightly rate than white Georgians.

They also submitted student photo ID information. The student photo ID issued by a state university is an accepted ID under the law. The information from the state colleges showed that black students represented 26.8 percent of public college students in the state, which was slightly more than their share of the voting age population.

Finally, the census data that was submitted showed that 19.4 percent of African-Americans in Georgia worked for the government, either at a local, state or federal level, while only 14 percent of whites did. Government-issued employee IDs were also acceptable. So all of the information submitted indicated that African-Americans in the State of Georgia had voter ID at the same rates or, in fact, slightly higher than white Georgians.

The election results in the state since then showed that that was, in fact, true. There was a
preliminary injunction issued in the federal lawsuit that was filed. If you read that case carefully, you will find that the Judge said that he made no finding and was not basing his preliminary injunction on the Voting Rights Act because there was no racial discrimination proven in the case.

He did find a constitutional violation. But the Supreme Court said in a case called Reno vs. Bossier Parish some years ago that when the Justice Department is reviewing a Section 5 submission, they can only use the voting rights retrogression standard. They cannot refuse to pre-clear a law because of a constitutional violation. And as for any constitutional violation, as you know, the Supreme Court took care of that recently in the Indiana case when it said there is no constitutional violation by a photo ID law.

And I would mention that in the final decision by the federal judge, not a preliminary injunction, but the final decision, the Judge found there was no violation of the Voting Rights Act, there was no constitutional violation.

And on the issue of a poll tax, I would be happy to read to you what the Court said about that. He said -- because the plaintiffs were trying
to argue that because of incidental costs, like having to travel to an office to get an ID or obtaining a birth certificate, that that was a poll tax.

The federal courts dismissed the claim, saying, "That argument represents a dramatic overstatement of what fairly constitutes a poll tax; thus, the imposition of tangential cost does not transform a regulation into a poll tax. Moreover, the cost of time and transportation cannot possibly qualify as a prohibited poll tax because those same costs also result from voter registration and in-person voting requirements which one would not reasonably construe as poll tax."

SEN. SHAPLEIGH: Let me ask you this:

Were you in Florida in 2000?

MR. von SPAKOVSKY: I went down briefly as an observer, as did a lot of people, to watch the counting of the vote.

SEN. SHAPLEIGH: This was before you got into the Voting Rights Section of the Justice Department?

MR. von SPAKOVSKY: I did lawyering in Atlanta at the time when that occurred.

SEN. SHAPLEIGH: Now, let me continue with this letter from your colleagues.
"Mr. von Spakovsky drafted legal briefs in lawsuits between the Republican and Democratic parties in three battleground states" -- this is during the 2004 election cycle -- "Ohio, Michigan and Florida, just before the election, all in favor of the Republican party's position and included a position that the Civil Rights Division had never taken [before] with regards to the statutes it enforcers, i.e. that there was no private right of action to enforce HAVA. These briefs ran counter to the well-established practice of the Civil Rights Division not to inject itself into litigation or election monitoring on the eve of an election where it could be viewed as expressing a political preference or could have an impact on a political dispute."

Did you participate in the drafting of these briefs?

MR. von SPAKOVSKY: Well, I'm very glad you brought that up, Senator. The briefs that were filed in that case, the Justice Department made the argument that there was no private right of action under the Help America Vote Act, which was a federal law passed in 2002.

It just so happens that a week before this past November election, the Democratic Secretary
of State of the State of Ohio filed the exact same
type of lawsuit, also claiming that there was no
private right of action under the Help America Vote
Act, after she was sued by local party officials in
Ohio.

And the Supreme Court, in fact, issued a
decision saying, "There is no private right of action
under the Help America Vote Act. So, you see, if the
career lawyers whose letter you are discussing, at the
time they wrote their letter, they said it was their
legal opinion that that position was wrong. Well, it
turns out they were wrong. In fact, the Supreme Court
has said the position that the Justice Department took
in that brief, all three briefs, were the correct
position.

SEN. SHAPLEIGH: Was there any career
DOJ lawyer who signed your letter, your response to
Dianne Feinstein in connection with your nomination at
the FEC?

MR. von SPAKOVSKY: I had letters of
recommendation --

SEN. SHAPLEIGH: Did anyone --

MR. von SPAKOVSKY: -- from many
different officials, and I was the one that was asked
to respond to that letter.
SEN. SHAPLEIGH: Let me see if I can't get you to answer the questions I'm asking. Did anyone sign your letter in response to these six career officials at DOJ to say what they're saying is not true?

MR. von SPAKOVSKY: Senator, I sent a letter to the committee.

SEN. SHAPLEIGH: So no one signed your letter, just you?

MR. von SPAKOVSKY: I was the one asked to respond to the committee, Senator.

SEN. SHAPLEIGH: Let me ask you about your participation in the 2003 Texas case, the redistricting case. There was a consensus of opinion by the career DOJ officials in that case, was there not?

What I am looking at here is DOJ career lawyers submitting a unanimous recommendation to object to an unprecedented mid-decade redistricting plan that Texas submitted in 2003, submitted by the career staff, a unanimous recommendation. That was rejected by political appointees, including yourself. Is that true or not true?

MR. von SPAKOVSKY: Senator, I was not a political appointee at the department. I have said
that several times. And if you want to talk about the
Texas redistricting case, I would point out --

SEN. SHAPLEIGH: I just need to
understand this --

MR. von SPAKOVSKY: No. I --
SEN. SHAPLEIGH: -- was there a
unanimous recommendation --

MR. von SPAKOVSKY: That unanimous --
SEN. SHAPLEIGH: -- by --
MR. von SPAKOVSKY: That recommendation
was incorrect, Senator.

SEN. DUNCAN: Hang on a minute. We're
talking over each other. One at a time.

Senator, you've got a question on the
floor.

MR. von SPAKOVSKY: May I answer?
SEN. DUNCAN: The witness can answer.
SEN. SHAPLEIGH: Let me ask, if I may,
Mr. Chairman.

SEN. DUNCAN: All right.
SEN. SHAPLEIGH: This letter from six
DOJ career lawyers says that a unanimous
recommendation to object to the mid-decade
re-redistricting plan in Texas was submitted and later
rejected by political appointees. True or not true?
MR. von SPAKOVSKY: Mr. Chairman, I can't answer that question "Yes" or "No." The only way to answer it properly and to get all the facts out is to give a detailed explanation of the legal review and the court case decisions in the Texas congressional redistricting plan. I would be happy to do that if you would like me to do so.

SEN. SHAPLEIGH: Well, let me just get one question answered. Did the career team -- not the political appointees -- have a unanimous position that the re-redistricting plan of 2003 did not comply with the Voting Rights Act and unanimously said, "We ought to reject it," and take that position? "Yes" or "No"?

MR. von SPAKOVSKY: Senator, the recommendation that they made was that there were 11 majority/minority districts in Texas that needed to be protected under Section 5 of the Voting Rights Act. As you probably well know, a federal court in 2001 found that there were not 11 districts that needed to be protected in this state. A three-judge panel said there were eight districts in this state that needed to be protected.

And when the Supreme Court issued its final decision in the LULAC v. Perry case, the Supreme Court said, "No, there are only eight protected
2 districts." So if you want to be able to show that
the legal opinions of those career lawyers were not
only wrong but, in fact, you know, the Supreme Court
and other judges have said that they were legally
incorrect, I would be happy to agree with you.

SEN. SHAPLEIGH: When you were nominated
to the FEC, a United States senator from Illinois
submitted a letter to the committee, and I would like
to read from that.

"Mr. von Spakovsky's role in supporting
the Department of Justice's quixotic efforts to attack
voter fraud raises significant questions about his
ability to interpret and apply the law in a fair
manner, as does his decision to ignore the
recommendations of long-serving career attorneys on
several occasions. Moreover, his role in the creation
of the Georgia voter ID law should have led to his
recusal from the Department of Justice's evaluation of
the law. His failure to recuse himself from that case
further demonstrates a lack of judgment that is not
befitting an FEC Commissioner."

Do you recall getting this letter?

MR. von SPAKOVSKY: I don't recall the
letter. But I would say, Senator, that the claim that
I was involved in creating the Georgia voter ID law is
factually completely incorrect. At the time the
Georgia voter ID law was being pushed through the
Legislature in 2005 in Georgia, I had been in
Washington working for the Department of Justice since
2001. So the letter is based, frankly, on a
complete -- frankly, a lie, saying that I had any
involvement, and that is completely untrue.

SEN. DUNCAN: Senator, before you -- and
you can keep going. But I just wanted to give you a
little bit of a notice, at 6:45 I think it will be two
hours since we've had a break for the court reporter.
So I just wanted to give you, if you wanted to -- you
can resume or whatever, but I wanted to give you a
little bit of notice of that.

SEN. SHAPLEIGH: I think I'm done. If I
could mark these as the next exhibit -- I think it's
Exhibit 15 -- the letters to the committee with
respect to the nomination at the federal level.

SEN. WEST: Mr. President --
Mr. Chairman, would the Senator yield?

SEN. SHAPLEIGH: Yes.

SEN. WEST: Who was the senator who
authored that letter?

SEN. SHAPLEIGH: The senator was Barack
Obama.
SEN. WEST: Oh, okay. Thank you.

So he was a liar. Okay.

SEN. DUNCAN: Being as we're not subject

to the hearsay rule, I'll go ahead and admit this
evidence.

Are you bringing them down?

(Exhibits handed to Secretary Spaw)

SEN. DUNCAN: Senator, I have here

Exhibit 15, which is a letter dated June 11, 2007, to

Diane (sic) Feinstein. And then there is another

letter in there.

SEN. WILLIAMS: Mr. Chairman?

SEN. DUNCAN: We'll have Exhibit 15A, B

and C. Exhibit A is the June 11, 2007 letter.

Exhibit B is the -- is this a blog or -- this is

signed by him? Okay. Or it's an e-mail from --

okay -- from Barack Obama, June 12, 2007, and then

also a letter from Public Citizen dated October 3,

2007, which will be Exhibit 15C.

(Exhibits Nos. 15A, 15B and 15C marked

and admitted)

SEN. DUNCAN: Members, we've been going

for about two hours. It's my plan to try to give the

court reporter a break every hour and 45 minutes to

two hours, as necessary. It will be a 10-minute
break --

SEN. WENTWORTH: Mr. President, could I ask one before we break?

SEN. DUNCAN: Sen. Wentworth.

SEN. WENTWORTH: I don't believe our witness came prepared to defend himself from attacks like this, and I would like to give him the opportunity to file, as part of the record, his response to the letters that have just been filed as exhibits.

SEN. WEST: Mr. President?

SEN. DUNCAN: Is there any objection?

SEN. WEST: There is objection.

SEN. DUNCAN: Why is there objection?

SEN. WEST: Well, first of all, the characterization that he has been attacked, I object to that.

SEN. DUNCAN: Well, we'll --

SEN. WEST: Like any other witness, we should be able to cross-examine him like we cross-examined other witnesses. I resent the characterization of him being attacked.

SEN. WENTWORTH: Well, you can resent it all you want.

SEN. WEST: Well, you can say it all you
want to also. He wasn't attacked, fellow.

SEN. DUNCAN: Let's take one thing at a
time. Is there any objection to the witness being
able to submit testimony to the committee --
SEN. WEST: There is objection.
SEN. DUNCAN: -- to be received in the
record post- --
SEN. WEST: There is objection, yes.
SEN. WENTWORTH: Mr. Chairman, I move
that the witness be permitted to respond in writing to
the letters that have been obviously not to his
advantage.
SEN. WEST: This man has characterized
the President of the United States as a liar.
SEN. DUNCAN: All right. We're going to
take a break and we will be back in session at
seven -- rather, 6:50 -- 6:55. I'm sorry.
(Recess: 6:46 p.m. to 7:06 p.m.)
SEN. DUNCAN: The Senate Committee of
the Whole will come to order. If we could get our
witness back up here. I think Sen. Shapleigh rested.
And we will call Sen. Williams.
SEN. WILLIAMS: Thank you, Mr. Chairman.
When the witness returns, I have some questions for
him.
SEN. DUNCAN: The witness is present. You can ask your questions.

SEN. WILLIAMS: Thank you, Mr. Chairman. Mr. Spakovsky, I don't want to butcher your name. Would you pronounce it for me once. I know I'm doing --


SEN. WILLIAMS: Say it again. MR. von SPAKOVSKY: "Spa-kos-ski."


I had some questions for you about a report that I think you referred to earlier in your testimony. Are you familiar with the report by Jeffrey Milyo of the effects -- it's titled "The Effects of Photographic Identification on Voter Turnout in Indiana: A County-Level Analysis." Are you familiar with that report?

MR. von SPAKOVSKY: Yes, Senator. In fact, that's the report I was referring to that took a look at what happened in Missouri in I believe 2006 when the photo ID law went into effect for the first time.
SEN. WILLIAMS: Now, just for the record -- and I'm going to submit this report into the record in a moment. And I think there are plenty of copies floating around here. I think everybody has got one.

Mr. Milyo is a professor in the Truman School of Public Affairs and the Department of Economics at the University of Missouri. And he's a Hanna Family Scholar in the Center for Applied Economics at the University of Kansas School of Business. And he's a Senior Fellow at the Cato Institute in Washington, D.C.

Would it be your opinion that Mr. Milyo has written an academic study, that this would qualify as what one might commonly refer to as an academic study of the effects of photo ID in Indiana?

MR. von SPAKOFSKY: Yes, sir, he is a very good researcher.

SEN. WILLIAMS: Okay. Now, before we get into the report, in one of the press releases that I've seen about this report, he asserts that, "Previous studies have examined the effects of voter ID laws more generally but none of these separately analyzes the effects of so-called 'mandatory photo ID' on turnout in Indiana."
He goes on to say that, "I examine a variety of models of voter turnout," and after controlling for several factors that influence countywide turnout, there is no consistent or statistically significant evidence that photo ID law depressed turnout in counties with greater percentages of minority, poor or elderly voters. Contrary to conventional wisdom, turnout in Democratic-leaning counties actually increased in the wake of the new photo ID requirements, all else constant.

Now, what's interesting about this report to me as I reviewed it is, there's been a lot that's been said on this floor about the effect of President Obama's election on the turnout, particularly in Georgia, because there is a large African-American population there. And, of course, people turned out in record numbers. But this report is actually -- the time period, as I understand it, includes two election cycles. In neither one of those, Mr. Obama wasn't running for president during either one of those election cycles, so this report wouldn't be influenced by that. Would that be your understanding?

MR. von SPAKOVSKY: That is my understanding, Senator.
SEN. WILLIAMS: Okay. And in the report -- and I just want to get this into the record here, and I would like for you to comment on this if you would, please. "In order to measure" -- he says in his report, "In order to measure the overall effect of photo ID on voter turnout across the 92 Indiana counties, I estimate an ordinary least squares regression controlling for county-fixed effects and year effects. The county-fixed effects account for factors such as demographic differences across counties, while the year effects account for the different composition of state races in each election year. However, there has only been one general election in Indiana post-photo ID, so it is not possible to separately identify the overall effects of photo ID on voter turnout absent additional assumptions. For this reason, the present analysis focuses on the effects of photo ID on different groups of eligible voters.

"I evaluate claims about the relative effects of voter ID on racial and ethnic minorities, the poor, the elderly, persons without a high school diploma and Democrats by estimating the effects of photo ID on turnout in counties with greater percentages of those groups as a percent of county
population. However, these demographic variables do not vary over time, since they are taken from the 2000 U.S. Census. This means that it is not possible to control for county-fixed effects when estimating the effects of photo ID on these particular demographic groups. For this reason, I account for differences in the demographic composition of counties by including control variables for per capita income and the percent of county population by several categories, including: Age, education, ethnicity, female labor force participation, military status, non-citizens, party, poverty, race, and rural status."

All of that is included in the appendix to this report. And he also goes on to say, "I also check the sensitivity of results when this list of control variables is pared down to just age, education, ethnicity, income, and race."

I don't know if you have a copy, but I believe that's on Page 4 and 5 of the report. Do you have a copy of it up there?

MR. von SPAKOVSKY: I don't have a copy of the report.

SEN. WILLIAMS: Would you like it?

MR. von SPAKOVSKY: But I've read it.

SEN. WILLIAMS: Okay. Now, what I would
like for you to comment on -- and that's a mouthful
that I just read -- but what I would like for you to
comment on is, how does the statistical analysis that
this academic has performed, would this be something
that would be comparable to the regression analysis
that we've heard talked about? Are we looking at the
same kinds of things here, how this would influence
minority turnout? Can you comment on that for me?

MR. von SPAKOVSKY: Well, I'm not an
expert on statistical analysis. But my understanding,
from reading that and many other reports is that, yes,
that's the kind of analysis he was doing to try to see
if the photo ID law of Indiana would have any effect,
particularly on different groups, because he was
looking, as you read it, different groups: The poor,
elderly, different minority groups. And he found that
it did not have any effect on depressing their
turnout.

SEN. WILLIAMS: So it would be a
reasonable conclusion for somebody to draw, after
reading this report, that the effect of the Indiana
voter ID law, it had really no effect on the turnout
among any of the groups that the DOJ Civil Rights
Department would be concerned about when they're doing
an analysis?
MR. von SPAKOVSKY: Under Section 5, that's correct.

SEN. WILLIAMS: Under Section 5. That would be your conclusion?

MR. von SPAKOVSKY: That is correct.

SEN. WILLIAMS: Okay. And so he goes on -- if I would -- if you could just bear with me a few minutes. There's a couple of other points that I want to make sure that you have an opportunity to comment on. He says in his conclusion, the discussion, that "Given the context of the existing research on voter turnout, my findings for Indiana are completely unsurprising. Despite the attention-grabbing and often strident claims that voter identification is the modern version of the poll tax and the like, nothing could be further from the truth. Existing theory and evidence from decades of social science research do not support the contention that photo ID requirements are likely to have a large and detrimental impact on turnout; nor does the previous empirical evidence find any significant impact of photo identification on racial or ethnic minorities. Further, the best previous evidence to date also finds no significant impact of photo ID on the poor or the elderly."
He goes on to say that the findings that emerge are, I believe, four-fold: One, that an overall county-level turnout -- he did a county-level analysis. Now, I think that's important when he's looking at it for all 92 counties. Do you know if that would be more or less detailed than they would do at the Department of Justice? Would they do a statewide analysis or would they do it on a county-by-county analysis? Do you know?

MR. von SPAKOVSKY: I guess it would just depend on the particular case.

SEN. WILLIAMS: Okay. And then an insignificant increase in the relative turnout for counties with a greater percentage of minority and poor populations; three, no consistent or significant impact on the relative turnout in counties with a greater percentage of less educated and elderly voters; and finally, No. 4, no significant -- excuse me -- a significant relative increase in turnout for counties with a higher percentage of Democratic voters. His final conclusion is that you actually had more turnout in Democratic precincts on a county level after this law was enacted than you did before. Does that surprise you?

MR. von SPAKOVSKY: It does not surprise
me, because my experience in the election area, frakly, is that when people have confidence that their vote is going to count, they go to the polls.

SEN. WILLIAMS: Thank you very much.

Mr. Chairman, I would like to submit this report with whatever our next exhibit number is.

SEN. DUNCAN: Senator, that would be 16. And will you state the title of the report and the date.


SEN. DUNCAN: Okay. What's the date of the article?

SEN. WILLIAMS: The report is dated -- it was revised December of 2007.

SEN. DUNCAN: Okay. It will be received into the record.

(Exhibit No. 16 marked and admitted)

SEN. DUNCAN: Are you completed with your -- Senator Watson.

SEN. WATSON: Thank you, Mr. Chairman.

I just have a couple of questions.

First of all, who funded the Milyo study that we just
talked about? Do you know?

MR. von SPAKOVSKY: I don't know.

SEN. WATSON: Do you know whether it was ever peer-reviewed?

MR. von SPAKOVSKY: I don't know the answer to that.

SEN. WATSON: Okay. Just so that I'm clear on why you're here today, first of all, you've not done any sort of statistical analysis of the effect that the new requirements of proposed Senate Bill 362 would have on African-Americans in Texas?

MR. von SPAKOVSKY: I have not done a study.

SEN. WATSON: And you haven't done that with regard to Hispanics?

MR. von SPAKOVSKY: No.

SEN. WATSON: Or people making less than $35,000 in the State of Texas?

MR. von SPAKOVSKY: No.

SEN. WATSON: You've not done any statistical analysis, nor been asked to, about the effect of the new requirements of the proposed Senate Bill 362 on people who speak only Spanish or Vietnamese in the State of Texas?

MR. von SPAKOVSKY: I have not.
SEN. WATSON: Have you done any sort of statistical analysis with regard to the potential impact of the new requirements of proposed Senate Bill 362 on seniors or students or people with disabilities in the State of Texas?

MR. von SPAKOVSKY: I have not, Senator.

SEN. WATSON: Do you have any knowledge that you can share with us regarding the impact that this proposed legislation would have on people who live along the border of Texas?

MR. von SPAKOVSKY: Is that somehow different than --

SEN. WATSON: Well, you may have just answered my question. Well, you know, I have not done a study of Texas.

SEN. WATSON: Okay.

MR. von SPAKOVSKY: But there have been plenty of other studies done, all of which have been mentioned, that have looked at these issues.

SEN. WATSON: Fair enough. And that's part of what I want to make sure is that we're clear, because since we are in Texas and we're talking about the impact on Texans -- for example, do you have any data with you today on whether or not African-
Americans of Texas are more or less likely to have driver's licenses than whites?

MR. von SPAKOVSKY: I haven't seen that data. I did take a look, Senator, before I came down, at some data that is available from the United States Government. And the U.S. Department of Transportation, the Federal Highway Administration highway statistics for 2006 showed that the total number of licensed drivers in Texas, age 18 and over, is 14.6 million.

The Census Bureau, current population survey, also for 2006, shows that the number of citizen voting age population is 14 million four. So there are actually more driver's licenses issued in the State of Texas than there are individuals eligible to vote in the State of Texas.

SEN. WATSON: And, of course, 16-year-olds are available to get licenses in Texas, even though they're not eligible to vote. How many --

MR. von SPAKOVSKY: The numbers --

SEN. WATSON: -- licenses were lost in the State of Texas last year?

MR. von SPAKOVSKY: I don't know, Senator, but the numbers I gave for the total licensed drivers were licensed drivers age 18 and up.
SEN. WATSON: All right.

MR. von SPAKOVSKY: I took out the numbers for individuals who were below the age of 18.

SEN. WATSON: How many of those licenses were lost last year?

MR. von SPAKOVSKY: I have no idea.

SEN. WATSON: How many of them were duplicate licenses?

MR. von SPAKOVSKY: I don't know.

SEN. WATSON: Thank you, Mr. Chairman.

SEN. DUNCAN: Senator Ellis.

SEN. ELLIS: Thank you, Mr. President.

Mr. von "Kosky" -- did I get that right?

MR. von SPAKOVSKY: "Spa-kos-ski."

SEN. ELLIS: "Spa-kos-ski." I'm sorry.

Is this your first time in Texas?

MR. von SPAKOVSKY: No, sir.

SEN. ELLIS: Have you been a frequent visitor to the Lone Star state?

MR. von SPAKOVSKY: I've been down here before on business.

SEN. ELLIS: Well, welcome back. I know you are familiar with the Carter-Baker Commission Report. And I'm wondering, of the 87 recommendations in that report, other than the one relating to voter
identification, are you in favor of the other 86 in that report?

MR. von SPAKOVSKY: Well, Senator, if you want to ask me about each one, one at a time --

SEN. ELLIS: Okay.

MR. von SPAKOVSKY: -- I would be happy to tell you, but I --

SEN. ELLIS: Any there any of them that you are against?

MR. von SPAKOVSKY: Senator, I read the report quite some time ago. In fact, if you look at the end of the report, you'll see me listed as one of the advisers to the Commission. I think there were lots of reports -- lots of recommendations in there I agreed with. I don't recall what all the different recommendations were. I think in many ways, you know, it was a pretty good report.

SEN. ELLIS: I assume you've gone around the country testifying on this subject --

MR. von SPAKOVSKY: I --

SEN. ELLIS: -- not the first time at this rodeo?

MR. von SPAKOVSKY: This is the first time I've really testified in a State Legislature about this issue.
SEN. ELLIS: You heard some of the discussion earlier where we were reading excerpts from editorials by President Carter and Secretary Baker. Is it a fair characterization that they were recommending voter ID as part of a package, and part of the package would be for states to comply with the REAL ID Act? Is that a fair assessment?

MR. von SPAKOVSKY: I believe there was -- if I recall, I think there was a recommendation in there about that REAL ID Act. I don't remember the detail.

SEN. ELLIS: I know. But I'm saying, do you think it is a fair representation of the position of the two principals from the Carter-Baker Commission, that they were saying voter ID was part of a package and that states should adopt the REAL ID provisions, not have these different standards all around the country? Their purpose was so that more people would be able to vote, or a concentrated effort to make sure that people were aware of the new requirements. Is that a fair assessment or not?

MR. von SPAKOVSKY: Senator, as I told you, it's been a while since I read the report. I, frankly, don't remember. You know, there is another witness here who I think is going to testify about it.
that could probably answer that question.

SEN. ELLIS: But you are for the voter
ID part, you read that part basically. You know
you're for that part, though. Right?

MR. von SPAKOVSKY: I recall that part,
because I was asked about it.

SEN. ELLIS: Okay. I have read that you
were involved in an effort or have done some writing
for the Georgia Public Policy Foundation to encourage
an aggressive campaign to purge the election rolls of
felons. Is that correct?

MR. von SPAKOVSKY: I wrote a paper
about 12 years ago, Senator. And one of the
recommendations I made in the paper was that the
state's voter registration list should be compared on
a regular basis with the computer records of the
Department of Corrections so that any individuals who
had become felons and were, therefore, not entitled to
vote under Georgia law, that that kind of data
matching should be done. You may know that's a
recommendation that Congress implemented into federal
law in 2002 in the Help America Vote Act.

SEN. ELLIS: Are you aware that as a
result of your article, you were given credit for a
very aggressive effort to remove felons off the roll
in Florida, and it also led to a major voter
disenfranchisement where they made mistakes and they
took Ron Ellis off the rolls, even if that was not the
person that committed a felony? And there were a
number of people who were denied the right to vote in
the 2000 election. Are you aware of that?

MR. von SPAKOVSKY: Senator, there was a
newspaper article written some time ago claiming that
I was somehow involved with that effort in Florida.
That is completely untrue. I was not an election
official in Florida. I had no involvement with that.
I simply wrote a paper in Georgia recommending that
the Georgia Legislature and Secretary of State
consider running monthly computer comparisons between
the state voter registration list and state
corrections records which now, you know, all states
are supposed to be doing that by federal law.

SEN. ELLIS: Maybe your reputation as a
guru on these subjects -- this subject -- has preceded
you around the country. You made a reference to the
Lawyers' Committee on Civil Rights earlier at the
beginning of your testimony. Do you remember that
characterization?

MR. von SPAKOVSKY: I do.

SEN. ELLIS: What was that, if you would
just repeat that for my colleagues again.

MR. von SPAKOVSKY: It's an advocacy
group based in Washington.

SEN. ELLIS: I think you described that
as a liberal advocacy organization.

MR. von SPAKOVSKY: Well, I would tend
to think they probably are liberal.

SEN. ELLIS: All right. How would you
describe the advocacy organization that you work for?

MR. von SPAKOVSKY: It's a conservative
foundation. It's the largest -- has the largest
support of any foundation in the country. It has
400,000 contributors, two-thirds of whom are
individuals.

SEN. ELLIS: Okay. So the lawyers you
meet on civil rights you characterize as a liberal
advocacy organization and the Heritage Foundation you
would describe as the best funded and extremely
conservative public policy out there?

MR. von SPAKOVSKY: I did not say
extremely conservative. I think they're a --

SEN. ELLIS: But conservative?

MR. von SPAKOVSKY: I think they're a
rule of law organization who believes in the
constitution and the principles this country was
SEN. ELLIS: Are you familiar with the history of the Lawyers' Committee on Civil Rights?

MR. von SPAKOVSKY: I know some of it, yes.

SEN. ELLIS: But what do you know about their history?

MR. von SPAKOVSKY: It's an organization born, I think, during the civil rights movement to help individuals who were having their voting rights denied.

SEN. ELLIS: Yes. Just for your edification and the members of this body, it was founded in 1963 as a result of a meeting that President Kennedy and Attorney General Kennedy and Vice President Lyndon Johnson, had at the White House, in which they summoned all of the major law firms in America to get involved and use their legal skills as a way of ending some of the demonstrations on the streets, to remove people who were pushing discriminatory practices all around the country, in Alabama in particular.

And only because you described them as a liberal organization, as though for some reason they ought to be dismissed, I just wanted to point out that
the who-is-who silk stocking law firms in America were in that room. Most of the bar associations around the country were involved, the ABA, and it is quite a distinguished history. And I just wanted to make sure that I added that to the record. Maybe you should do a little research on the --

MR. von SPAKOFSKY: Senator, I certainly don't disagree with you. But if you're recall, what I said about the Lawyers' Committee For Civil Rights was in the context of explaining that two of the lawyers who had complained about me, in fact, worked for the Lawyers' Committee For Civil Rights and, in fact, were lawyers who were the litigators in the federal lawsuit in Georgia against the Georgia voter ID law. And, in fact, they lost that suit. And, in fact, the legal claims that they made were dismissed by the judge there.

SEN. ELLIS: Are you familiar with The Federalist Society?

MR. von SPAKOFSKY: I am a member of The Federalist Society.

SEN. ELLIS: And how would you characterize that organization?

MR. von SPAKOFSKY: It's a group of lawyers who get together and discuss many different
issues. And one of the good things about the Federalist Society, if you ever come to one of its panel discussions is, and like a lot of organizations, The Federalist Society tries to get people on both sides of an issue so that you can have a good discussion and get different points of view.

SEN. ELLIS: Thank you.

SEN. DUNCAN: Members, there's no other persons registered, so the witness will be excused.

MR. von SPAKOVSKY: Thank you,

Mr. Chairman.

SEN. DUNCAN: Thank you, sir.

The Chair calls Tova Andrea Wang.

Ms. Wang, you have 10 minutes. And you can begin.

And state your name and who you represent.

TESTIMONY BY TOVA ANDREA WANG

MS. WANG: Sure. Thank you. My name is Tova Andrea Wang. Thanks very much for allowing me to come testify today. I'm Vice President for Research at Common Cause, a non-partisan national organization with 36 state chapters, including one right here in Texas. And I have spent the last several years doing research and writing and speaking on elections issues and voting rights issues.

I want to start out talking about the
disenfranchising impacts of voter ID such as this. I know that for probably all of you in the room -- and I would include myself -- it seems so easy. You have an ID in your pocket right now, probably several. But I have to really emphasize to you all that it's not the case for everybody. For some people they don't have their ID, and it would be a real hardship for them to get that ID, and we need to understand this group in our society. In fact, about 10 percent of the American people don't have government-issued photo ID. And as has been pointed out repeatedly today, this is disproportionally the case with African-Americans, immigrants, the poor, people with disabilities, senior citizens and students.

There have been numerous studies to this effect. I want to point out one in particular, Brennan Center survey talking just about income. People with incomes lower than $35,000 a year are twice as likely not to have the kind of ID we're talking about. 38 percent of Texans have incomes that are less than $35,000 a year. African-Americans are three times less likely to have ID than whites. And, in fact, one-fourth of African-Americans don't have government-issued photo ID.

So this is what I'm talking about when
I'm talking about thinking about a group in our society that maybe some of us don't have every day interaction with. People always talk about how everyone has ID, you need it to fly and rent a DVD and all of these kinds of things.

Now, I know Hurricane Katrina is starting to seem like a long time ago now, but I want us to think back for a second about all those people in the Astrodome. They were there because they couldn't get out, because they don't have driver's licenses, they don't have cars, they're not going out and renting DVDs on the weekends and flying on vacations. So this whole notion that everyone has ID is just untrue. Many poor people don't.

We talked a lot about fraud today, too. There is also a lot of mythology around that. I want to point out to you that the U.S. Department of Justice has never brought a case in the last several years of the type that would be addressed by a voter ID law such as this.

Now, we know this was in an environment in the last several years in which U.S. attorneys were under tremendous pressure to bring cases of voter fraud against people, and people were -- allegedly at least -- fired for not doing so; and, yet, not one
It is also especially telling that in all of the litigation, federal litigation over voter ID that's taken place, not one of the states defending these laws has come up with a single case of fraud that would have been addressed by a voter ID law. In fact, in Crawford versus Marion County, the Indiana case that we've heard a lot about today, Justice Stevens himself, in writing the opinion essentially admitted this, because the only incident of fraud that he really -- were impacted that I noticed -- we've reached back into the past for examples a lot today -- was Boss Tweed in the 19th Century and one possible case that has gone unproven in Washington State in 2004.

There is another thing I want to underscore about the fraud thing. Problems with -- or even fraud in the voter registration process is a fully unrelated, although very worrisome problem in itself. There is no available evidence that faulty or even false registration forms lead to fraudulent voting.

Even advocates from across the spectrum, academics and, more importantly, elections officials and registrars, as I have done in the course of my
work, and they will tell you that they have not seen a case of voter registration fraud that led to a false vote.

I just want to talk to you even about -- the most extreme discussion about voter registration just this last year around the organization ACORN; and, yet, I have not heard of one case of someone who was accused of having registered falsely through ACORN, actually showing up at the polls to vote.

Now, voter registration fraud is a problem. It should be taken seriously and it should be prosecuted, but voter identification will do nothing about voter registration fraud.

Now, it seems to me that because proponents of ID have not been able to demonstrate that fraud is actually a problem, they're claiming that we need to have voter ID laws because the American people believe it's a problem. And if they believe it's a problem, they won't have confidence in the system and they won't turn out to vote.

Well, we now have actual studies done that show that belief in the existence of fraud has zero impact on voting behavior. And, in fact, professors at MIT and Columbia conducted a survey published recently in the Harvard Law Review that
found that perceptions of fraud have no relationship at all to someone's likelihood of voting.

And it's very convenient that the people that are making this perception that all about -- this is all about instilling confidence -- are the people who made people believe in the first place falsely that there was this fraud problem. So it's questionable what this is all really about.

I also want to point out to you that many states do not have a photo identification requirement and so -- in fact, most states don't have a photo identification requirement, and they don't have any problem with polling place fraud, as Texas does not have such a problem. And they are a diverse set of states, many with immigrant populations and they have no great problem with voter fraud.

And I believe that those states care just as much as the State of Texas about the integrity of their elections, and they don't feel that a voter ID requirement such as this is necessary, and they're right. And even in those states that do require a photo ID, they still allow someone to fill out an affidavit if they don't have the ID. And they are allowed to cast a regular -- not a provisional -- but a regular ballot.
I also want to talk about this idea, giving people free IDs is somehow the solution. The truth is, ID is never free. It's not free for the voter and it's not free for the state either. I'm going to use Indiana as an example, to show why voter ID is never really free for the voter, as Texas is likely to have a similar program.

In order to get the so-called free ID, you have to do to DMV during working hours and present the primary document, a secondary document and a proof of residency or two primary documents and one proof of residency document. The only documents basically that count are passports and birth certificates.

Most people -- and I include myself in this -- don't have their birth certificate handy at home, so they have to go out and buy it. Well, in Texas it costs $22 to get a birth certificate, and in many places it's much more than that and also can be very time-consuming, so that someone who needs to register and vote is going to have to do this well in advance.

And there are additional difficulties if your name has changed at all since you got your birth certificate, which means that particularly women who have married and have changed their name will
encounter further difficulties.

I also heard you talking earlier today about the cost. For constitutional reasons, as was demonstrated by the Georgia litigation over this issue, you will need to ensure that every eligible voter in Texas can easily obtain a free photo identification card and to do that right and to do it within the mandates of the Voting Rights Act against poll taxes is going to require enormous resources.

In 2005, Georgia found this out the hard way. And I would refer you to my written testimony. I have in there in the end notes all the various steps that Georgia had to take in order to comply with the constitution, to educate people on it. It goes far beyond anything I think you discussed today does.

Now, we don't know exactly how much in dollars this is going to cost you. As we've talked about today, there has not been a financial impact analysis. But I will say that this is a recurring cost; this isn't going to be $600,000 or whatever was discussed just this year. It's going to be $600,000 this year or a million dollars this year and a million dollars next year.

So there's going to have to be this ongoing campaign in order to comply with the
constitution. And so I think that this will end up costing millions of dollars over the course of the next few years. And I say this as an outsider and perhaps, as such, it's not my place. But I do have to wonder how Texans will feel about millions of dollars being spent on a phantom problem when people are losing their jobs. And as you probably know, Texas actually is No. 1 in the number of people who don't have health insurance.

I want to make one other point about voter ID, that I don't think Texas might really want to get involved with right now. Studies of real elections show that whether it's purposeful or not -- and I know I'm going to go overtime, so tell me if -- I only have a little bit more.

Studies of elections show that whether it's purposeful or not, poll workers demand photo identification much more often from African-Americans and Latinos than white voters. Now we're talking about implementation on the ground at the polling place.

In a study conducted by a Harvard professor of tens of thousands of voters in the 2006 general election, 47 percent of whites were asked for photo identification whether it was required or not,
compared to 54 percent of Hispanics and 55 percent of African-Americans.

Harvard did a survey of thousands of voters in the 2008 Super Tuesday primary -- and I am wrapping up. 53 percent of whites were asked for photo ID, compared with 58 percent of Hispanics and a staggering 73 percent of African-Americans. And this was true even after controlling for factors such as income, education, age and region.

Again, another study in New Mexico in 2006 again found Latinos were disproportionally asked for ID when they weren't supposed to be, and this is true in the Super Tuesday and 2007 gubernatorial elections as well.

Now, the point is that most states run their elections without the kind of laws that you're talking about here in Texas, and they do just fine. They have very honest elections, and I believe Texas can do just as well.

Texas has a very low turnout, voter turnout rate; in fact, one of the lowest in the country. Even in the historic election of 2008 when voters came out in unprecedented numbers, less than 55 percent of Texans voted, earning it the dubious distinction of ranking 48th in turnout nationally.
It's my opinion that if the Texas State Legislature is concerned about the fairness of its elections, it would be better off using all of its energies and resources to do something about that problem rather than a problem it does not have.

Thank you very much.

SEN. CARONA: Ms. Wang, we thank you for your testimony.

The Chair at this time calls upon Sen. Gallegos. Senator, for what purpose?

SEN. GALLEGOS: To ask the witness some questions, Mr. Chairman.

SEN. CARONA: Please proceed.

SEN. GALLEGOS: Thank you.

QUESTIONS FROM SENATE FLOOR

SEN. GALLEGOS: Ms. Wang, thank you for being here. I've got several questions that I would like to ask you. The first one is, doesn't it solve the problem for those lacking a photo ID, that under this legislation as presented before us today, that you can produce two other forms of ID?

MS. WANG: You know, certain groups don't possess government-issued photo IDs. They're also much less likely to have two forms of identification that are on the list of other possible
ID forms. And basically what you're asking people to do is, is sort of bring a file folder full of identification documents and engage in a huge campaign to make sure people know what they are.

And there is no affidavit option like there is in other places, if you cast a provisional ballot if you don't have ID. As I understand Texas law, they automatically won't get counted. If you cast a provisional ballot because you didn't have the requisite ID, the ballot will not count.

Now, I can go through the list of the various types of ID that a person can use if they have two forms of it and talk about why each one of them might be difficult. For example, one of them is, you know, using a copy of a current utility bill or a bank statement, et cetera. Well, not everyone has such documents in their name. For example, married women whose bills come in their husband's names or poor people who quite often live in multi-family homes.

I can go through the list and talk about why poor people or different groups of people won't have any one given form. And to ask them for two plus their voter registration certificate, as I understand it, is really asking people to just sort of dump everything they have in a folder -- and they may not
have them at all -- and hope that they get past the
poll worker with them.

And, as I say, there will be many groups
that don't have them. I've talked about the birth
certificate and the fact that you had to pay $22 to
get it. A divorce decree and a marriage license, a
copy of a marriage license costs $20 in Texas. A copy
of a divorce decree costs $20 in Texas, as I
understand it at least. And so, you know, there are
difficulties in obtaining all of these types of IDs,
so it really doesn't solve the problem at all.

SEN. GALLEGOS: Thank you. Let me ask
you this: There has been a lot of debate today on
voter fraud -- and, you know, there is a lot of it; in
some cases, there is none of it. Let me ask you, is
there a great deal of voter fraud in the United States
that justifies a voter ID?

MS. WANG: I won't come out here and
tell you that there's not voter fraud. I will come
here and tell you that there is not the type of voter
fraud that a voter identification requirement such as
that proposed in this legislation would do anything
about.

And we are talking about an environment
in the last several years in which you've never seen

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such an aggressive operation by law enforcement to
ferret out instances just like what we're talking
about here today, and they didn't come up with
anything.

I'm hearing examples today. I think
Mr. von Spakovsky even couldn't come up with anything
in Texas since the 1800s and a ballot box stuffing
case from 60 years ago. And there's just no evidence
of it. There is simply no evidence of polling place
fraud. Now, there are a lot of other problems in the
voting system that can alter the outcome of an
election. And I think it would be great if the
Legislature was discussing those issues here today,
but that's not what we're discussing. We're
discussing something that isn't a problem.

SEN. GALLEGOS: Let me ask you, another
issue that's being debated on the floor is financial
cost. And I guess if you can explain to us, or just
let us know that if there -- what financial cost is
there to the state if it enacts -- let's say we enact
this bill today, I would like to know what financial
cost is on the voter ID and if there is any -- is this
a one-time cost or have you seen in other states that
the costs continue to rise or any -- not direct by the
bill being passed but any indirect costs?
MS. WANG: Yes. I mean, as I said, this will be a recurring cost to the state. I can only tell you what Georgia has had to go through in order to make sure that the voters are educated and the poll workers trained.

Before the election, the Secretary of State sends a reminder letter to over 80,000 active and inactive registered voters across the state who might not have ID. They received informational brochures and postcards leading up to the election. They contacted hundreds of thousands of voters, reminding them to bring the ID with them. They advertised extensively on radio and on cable television. They distributed information all over the state and public facilities.

And, of course, they had to go through a whole new separate type of training for elections officials and poll workers who -- you know, frankly, you're asking to be quasi-law enforcement authorities in determining the validity of a government-issued identification card. And all of that will have to be done every single year, and that doesn't take into account the cost of providing the so-called free ID.

SEN. GALLEGOS: So you're saying extra costs?
MS. WANG: It's going to cost quite a lot, and it's going to cost every year.

SEN. GALLEGOS: You couldn't give us a figure, could you?

MS. WANG: It's several hundred thousand dollars a year in Georgia, which it has been pointed out is quite a smaller state than Texas is, so I would have to guess -- and I would be totally guessing -- but at least a million dollars.

SEN. GALLEGOS: All right. Let me ask you, Ms. Wang, how many cases of election fraud brought by the United States Department of Justice over the last let's say several years were of the type that would have been addressed by voter ID?

MS. WANG: None.

SEN. GALLEGOS: None?

MS. WANG: None.

SEN. GALLEGOS: All right. Let me ask you, are there laws on the books right now that allow for prosecution of people who commit voter fraud, and is there any proof of these laws that are not working?

MS. WANG: Well, you know, that's one of the kind of astonishing things to me about all of this. You know, you're asking us, or people who are advocating for the ID are trying to persuade us that...
someone would go into a polling place to affect one
vote, change one vote.

And basically if they're caught, which
given the enormous efforts that have gone on in this
state to catch people doing this, they may be -- risk
going to jail for up to ten years and a minimum of two
and a fine of $10,000. I don't know what kind of
lunacy that would be, to risk spending ten years in
jail to change one vote at the polling place. So I
think that's quite an effective deterrent, and I think
it has been.

SEN. GALLEGOS: Okay. Ms. Wang, let me
ask you, do most states have a photo ID requirement?
And do the states that don't impose photo ID
requirements have huge fraud problems?

MS. WANG: Well, as I said, about half
the states have basically next to no identification
requirement, and that includes states like California,
and North Carolina. And, actually, while I have North
Carolina on my mind, just in sort of response to
things that have been said earlier, you know, the
state that had the highest increase, greatest increase
in turnout in the last election in 2008 was North
Carolina. And not only did they not impose a voter ID
requirement such as what you're discussing here today,
but they did initiate same-day registration, which is a much more fruitful thing for you to be perhaps discussing.

But, as I say, about half the states don't have strict voter ID requirements. There are seven states that require a photo ID. And in four of those states, they allow a person to simply fill out an affidavit if they don't have the ID, and they are able to cast a regular ballot. And so we are talking about a very small universe of states that feel it necessary to put people through these hoops and hurdles in order to exercise their right to vote.

SEN. GALLEGOS: Ms. Wang, let me ask you, you heard the author of the bill say that we could probably give free IDs when needed. If a state -- let me ask: If a state provides a free ID to everyone, would it really be free? And with a follow-up, wasn't Indiana's ID free? And how did the free ID work in that state?

MS. WANG: Well, it depends on what you're going to ask people to do in order to get the free ID. I take it that there are not plans to go door-to-door to every household in the State of Texas distributing identification cards to anyone who needs one.
And so I imagine that people will have to go to DMV during working hours. If they work on an hourly wage job, that's probably difficult. If they have small children, that's probably difficult. If they have a job that relies on tips, that's probably difficult.

And then they will have to present all sorts of identification in order to get the identification. I imagine, if this works anywhere close to the program in Indiana, they will probably have to present their birth certificate. And getting a certified copy of your birth certificate costs $22. How that is not a cost, how that is not ultimately a poll tax is really beyond me.

SEN. GALLEGOS: Well, I mean, I just want to tell you that a lot of the process in this giving a free voter ID, I mean, that was just told to us. We really don't know how the process is going to work on anybody asking you for a free photo ID. That's not explained in the bill.

MS. WANG: I would actually make one follow-up point to that, which is that even in the Indiana law, someone who comes to the polls without ID is allowed to cast a provisional ballot and return within 10 days, either to present identification or
fill out an affidavit attesting to their indigency, that they are too poor to have ID. There isn't even that in this current bill, to allow for the possibility that there are poor people in our community who might not have the identification.

SEN. GALLEGOS: Let me ask you this:

Let's say I'm given a free ID and I go to the polls, but I only speak Spanish, only, and the precinct worker cannot speak Spanish. Even though I have been given a free ID from the state, can that precinct -- under this bill, can that precinct judge, worker, deny me the right and say, "I can't -- I don't understand you. You're going to have to give me other forms of ID"?

MS. WANG: Well, whether the law allows it or not, as I've indicated, that's what, practically speaking, happens all the time. What you find is, is that blacks and Latinos are far more likely to be asked by poll workers for identification, whether it is required of them or not. That's just a reality, and it's just a road that seems so unnecessary to go down.

SEN. GALLEGOS: But as open-ended as this bill is, that happens to me, in the example I just gave you, and the ID was given to me by the
state. And they, you know, obviously took all the
data that they needed and knew I was a U.S. citizen
and everything. If I speak Spanish only and I'm
rejected at the polls, I'm rejected at the polls
because the poll worker does not speak Spanish, is
that a denial of my voting rights?

MS. WANG: Yes, of course.

SEN. GALLEGOS: Okay. Let me ask you
this: In states that have voter ID requirements, are
there any studies that have been done which show that
the ID requirements in those states have not been
applied even-handedly?

MS. WANG: Yes. As I said, there now
have been several studies done that look at thousands
and thousands of voters that show pretty dramatic
disparities between African-American voters and Latino
voters and white voters.

SEN. GALLEGOS: Let me ask this, if you
can explain to me and discuss the problems with
vesting thousands of election judges with the
authority to verify additional requirements?

MS. WANG: Yes. I mean, that is a huge
problem. You're leaving a lot of decisionmaking
authority with poll workers who are often,
unfortunately, not very well-trained to begin with or
often not terribly on the younger side, who will have
to be given tremendous training in order to even hope
that this will be applied in a consistent manner.

And, as I said, you're basically asking
them -- I mean, another scenario I envision is,
someone comes in with their government-issued photo ID
that was taken 10 years ago and maybe they've gotten a
little grayer or added a few pounds and don't look
exactly the same as they used to. And the poll worker
will say, "This isn't you." I don't know what happens
in that situation.

SEN. GALLEGOS: One last question,
Ms. Wang. Let me ask you, it's kind of like sort of
the question that you already answered, only can you
comment on the likelihood of election judges dealing
with African-Americans, Hispanic and aged Americans,
that they will ask for proof of their ID at a higher
rate than others?

MS. WANG: Yes. I mean, that's clearly
borne out by the surveys that have been done to date.
We've known this anecdotally for years. And I don't
want to presume any particular motivation or reason
for this. All I know is that as a practical matter,
that's what you see.

SEN. GALLEGOS: Ms. Wang, thank you very
MS. WANG: Thank you.

SEN. DUNCAN: Sen. Lucio.

SEN. LUCIO: Thank you, Mr. President.

And I'll be brief.

I understand you spent several years doing research and writing on election reform and the voting rights issue. And you're a member of -- excuse me. Your organization has got a membership in 36 state chapters. How extensive have your studies been in Texas on voter ID? And, actually, what I really want to know is, along the border of Texas, do you have any information that would allow me to better understand how this issue pertains to minorities or Hispanics along the Texas-Mexico board and to that of other states such as Indiana, Georgia, given the cultural value as a way of life, et cetera, taking into consideration how this would impact those that I represent compared to an Hispanic, let's say, in Indiana or Georgia?

MS. WANG: I have not looked at that, and I think that that would be something that would be very important for someone to analyze before passing such a law and submitting it for pre-clearance.

SEN. LUCIO: I guess I can download a
lot of information on your website in terms --

MS. WANG: Sure.

SEN. LUCIO: -- of what you discuss here this evening?

MS. WANG: Sure.

SEN. LUCIO: Thank you very much.

SEN. DUNCAN: Ms. Wang, we have a copy of your written testimony exhibit which will be submitted in the record as Exhibit 17, dated March 10, 2009.

(Exhibit No. 17 marked and admitted)

MS. WANG: Thank you very much.

SEN. DUNCAN: Thank you. You're excused.

The next witness will be Cameron Quinn. Sen. Fraser.

Ms. Quinn, you have 10 minutes.

TESTIMONY BY CAMERON QUINN

MS. QUINN: Thank you very much, Senator. It's a pleasure to be here on behalf of the Carter-Baker Commission on Federal Election Reform, which was formed and issued a report in 2005. My name is Cameron Quinn. I am, among other things, a former chief state election official for the Commonwealth of Virginia. In Virginia, that's the Secretary of the
State Board of Elections as opposed to the Secretary of State.

I'm also a former Department of Justice voting election official and spent three years as the U.S. elections advisor for IFES, which is formally known as the International Foundation For Election Systems.

I'm here today on behalf of the Commission, however, and I want to make sure that you know a little bit about the Commission that issued the study. In addition to President Carter and Secretary Baker, there were two former Secretaries of State -- a Republican and a Democrat -- a journalist, four former members of Congress -- including two Democrats and two Republicans: Reps. Molinari, Michel, Hamilton and Sen. Daschle -- six academics, including the President of Rice University, and five other people who were either appointed or elected in the political process, including your former Supreme Court Chief Justice, Tom Phillips. In fact, Texas was very well represented. There were four of the 21 members of the commission who, in fact, were Texans.

The commission was formed, organized by the American University Center for Democracy and Election Management, and it was in association with

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Rice University's Baker Institute for Public Policy and the Carter Center. And the activities of the Commission were supported by funding a research by the Carnegie Corporation of New York, the Ford Foundation, the Knight Foundation, the Omidyar Network and The Pew Charitable Trusts.

There's been a lot of reference to the report. I understand everyone is receiving a copy if they didn't already have it. In the interest of time, I'm not going to go through a lot of the details in the report but will focus on the particular issue at hand.

When the report was issued, there was a letter at the front of it signed by President Carter and Secretary Baker. It starts out, "Elections are the heart of democracy."

"If elections are defective, the entire democratic system is at risk.

"Americans are losing confidence in the fairness of elections, and while we do not face a crisis today, we need to address the problems of our electoral system."

It goes on to say, "Benefitting from Commission members with diverse perspectives, we have proposed, for example, a formula for transcending the
sterile debate between integrity and access."

"We are recommending a photo ID system for voters designed to increase registration with a more affirmative and aggressive role for states in finding new voters and providing free IDs for those without driver's licenses. The formula we recommend will result in both more integrity and more access."

"We present this report because we believe the time for acting to improve our election system is now."

I also want to read from one other portion of the report that I think is really fundamentally at stake here, and that is that the commission, under its provisions related to voter identification says, "While the Commission is divided on the magnitude of voter fraud -- with some believing the problem is widespread and others believing that it is minor -- there is no doubt that it occurs. The problem, however, is not the magnitude of the fraud. In close or disputed elections, and there are many, a small amount of fraud could make the margin of difference. And second, the perception of possible fraud contributes to low confidence in the system. A good ID system could deter, detect, or eliminate several potential avenues of fraud -- such as multiple
voting or voting by individuals using the identities
of others or those who are deceased -- and thus it can
enhance confidence. We view the other concerns about
IDs -- that they could disenfranchise eligible voters,
have an adverse effect on minorities, or be used to
monitor behavior -- as serious and legitimate, and our
proposal below aims to address each concern."

There has already been reference to the
reliance on REAL ID. This was a portion of the report
recommendation. But it goes on to say, "Reliance on
REAL ID, however, is not enough."

"Where they will need identification for
voting, IDs should be easily available and issued free
of charge."

I can go into any number of things
related to the report. I know that there has been
reference to some of the other provisions. But
recognizing that time is short, I want to also
reference a letter to the editor that was written by
Andrew Young, the former Mayor of Atlanta, who had
spoken to the commission, actually not at a public
hearing but at a private dinner they had ahead of
time. And he wrote this in September of 2005.

"Why did I give conditional support to
the Commission on Federal Election Reform for its
recommendation of the required federal ID when I met with members last month? First, because there is already a photo ID requirement in federal law, the new REAL ID requirement. Why not use it to improve the voter registration and election administration?

"Second, any required photo ID must be made widely available, easily accessible and free of cost. A photo ID is a weapon against the bondages of poverty. Low income neighborhoods have ubiquitous predatory check-cashing centers which thrive because other establishments won't cash checks without a standard photo ID."

And finally, the Commission was rather pleased at the time the Supreme Court issued the Crawford vs. Marion County case, that, in fact, the commission's work was recognized -- in fact, in a dissent written by Justice Breyer, who writes toward the end of his dissent, "Of course, the Carter-Baker Report is not the Constitution of the United States. But its findings are highly relevant to both legislative and judicial determinations of the reasonableness of a photo ID."

While Justice Breyer did not support the Indiana voter ID law, he does seem to suggest that trying to conform it with Carter-Baker's
recommendations would have been, in his opinion, appropriate.

Mr. Chairman, I am delighted to answer questions. But I think in the interest of time, I'll stop there.

SEN. DUNCAN: Thank you, Ms. Quinn.

Sen. Ellis?

SEN. ELLIS: Thank you, Mr. President.

QUESTIONS FROM SENATE FLOOR

SEN. ELLIS: Thank you, Ms. Quinn, for coming.

What position did you play with the Baker-Carter Commission, or Carter-Baker Commission?

What was your role?

MS. QUINN: My title was an Academic Advisor. I was not on the commission, but I was one of a host of people, including some of the people here today, who helped advise the commission.

SEN. ELLIS: Do you have any idea how many academic advisors they had?

MS. QUINN: It was somewhere in the range of a couple of dozen. There is a list at the end of the report. And I can't say that I've memorized the list or counted them today.

SEN. ELLIS: I was told maybe somewhat
in the neighborhood of 100. Do you know?

MS. QUINN: If there were, I never saw a
list that was that long, but that doesn't mean that's
not the case.

SEN. ELLIS: Okay. And what is your
position now? What do you do now?

MS. QUINN: Currently, sir, I'm an
independent consultant.

SEN. ELLIS: You are a consultant?

MS. QUINN: Yes. sir.

SEN. ELLIS: And who are some of your
clients?

MS. QUINN: Well, at the moment I am
working with the Republican Lawyers.

SEN. ELLIS: I couldn't hear you.

MS. QUINN: The Republican lawyers.

SEN. ELLIS: Republican lawyers.

MS. QUINN: The Republican National
Lawyers Association.

SEN. ELLIS: 'That's a good group.

MS. QUINN: It is a good group. They
fight very hard --

SEN. ELLIS: They didn't give me an
interview when I got out of law school.

MS. QUINN: Did they?
SEN. ELLIS: But it's a good group.
And in your capacity here today --
MS. QUINN: Yes, sir.
SEN. ELLIS: -- are you representing the
Carter-Baker Commission or are you just testifying
from the vantage point of someone?
MS. QUINN: No, sir. I am here and was
requested by Secretary Baker's staff to be here on
behalf of the Carter-Baker Commission.
SEN. ELLIS: Okay. You heard my
discussion earlier, and you made reference to the
totality of the recommendations in the report --
MS. QUINN: Yes.
SEN. ELLIS: -- 86 or 87, somewhere in
that neighborhood.
MS. QUINN: I believe it was 87. I will
say that I did not go back to double check today.
SEN. ELLIS: That's okay. What would
you characterize as the major recommendations in the
report? Obviously, voter ID has gotten the attention
of a number of states for some reason.
MS. QUINN: Well, let me say that the
Executive Summary nicely summarizes them. And they
propose a voter registration system in which the
states, not the localities, are responsible for the
accuracy and quality of the voter lists, and other ways to improve voter registration. They propose the voter ID requirements.

SEN. ELLIS: The REAL ID Act?

MS. QUINN: The REAL ID Act.

SEN. ELLIS: You heard the discussion, maybe heard the discussion between Sen. Fraser and me a bit earlier in which he quoted an opinion editorial and I quoted one. Now, I tried, to the best of my ability, to be balanced, because I made reference to the section in which they said both Republicans and Democrats were at fault or something to the effect, if I can paraphrase it, that Republicans were pulling out the ID provision. Based on the comment, I took it to mean because they felt it would give them an electoral advantage. And it said Democrats were criticizing the voter ID provision and not making the case to go and do all of the other things, I assume making reference to the REAL ID provision. Was that a fair characterization of what they were saying in that opinion editorial?

MS. QUINN: I think it is fair to say that for some reason, election reform tends to divide Republicans and Democrats, probably because they recognize it may have an effect on their elections,
and that generally speaking, Democrats seem to be more concerned about access and Republicans more concerned about integrity. But I would say to you that it's my impression, from talking to many Democrats and Republicans, both elected and election officials, that they all agree that both are important.

SEN. ELLIS: Well, from your vantage point as an advisor, or one of the academic advisors to the commission, would it be fair to say that you -- not the commission -- you would have some concerns about whether or not there would be a disproportionate impact on certain groups if you don't adopt more than the voter identification provision? REAL ID provision in the major one that both President Carter and Secretary Baker made reference to in that editorial.

Do you have any concerns about a state just adopting the voter ID provision and that concern being whether or not it would have a disproportionate impact on certain groups, whatever they are, people who have -- students from abroad, any concerns on your part about a disproportionate impact on certain groups?

MS. QUINN: Senator, I would say that I always, when I was an election official, was concerned about trying to make sure that we enfranchised as many voters as possible. And I understand that you're
asking me about this particular bill, but I think it needs to be looked at in totality of other Texas election law and procedure. And I do believe that Texas has a number of other -- of these provisions. I know, for example, that under the Help America Vote Act, they already have adopted a statewide system. Now, I can't recall the details of their statewide system, and there may be some issues with it, but I know that they've already adopted provisional balloting. That's also required by the Help America Vote Act.

SEN. ELLIS: Well, the reason I'm asking you the question that I asked is because you are here, and it says Academic Advisor, Carter-Baker Commission.

MS. QUINN: Yes, sir.

SEN. WHITMIRE: So I'm assuming that Secretary Baker didn't ask you to just come here for the weather in Texas.

MS. QUINN: No, sir!

SEN. ELLIS: So it would give the impression somehow that you are endorsing or you are for just having Texas adopt the Voter ID Act. I mean, that would be the impression that a reasonable member of this body would get.

So I'm asking you, since you say
Secretary Baker asked you to come, to comment on the opinion editorial that I could give you again to look at in which he and President Carter said they were concerned that a voter ID bill by itself would have a disproportionate impact on certain groups and that states ought to adopt the REAL ID Act, and there are other recommendations. They were concerned, based on that opinion editorial -- I think you heard me read it earlier -- about just picking out one piece.

MS. QUINN: I agree that that's the case. They are concerned that people focus on only one or two of the requirements.

SEN. ELLIS: Any guess why people maybe in the Lone Star State -- I know maybe you don't come here that often -- would just pick this part, the voter ID part?

MS. QUINN: Sir, it is my understanding that this state has not only picked that, that there are other provisions from the Carter-Baker Report That have been addressed by the state. I don't know most of them, because I'm not someone who is frequently in Texas. The longest time I spent in Texas was five weeks once when I was summer-clerking. So I can't say that I know Texas law or Texas procedure, but I do know certain things that they have adopted that are
part of the report.

SEN. ELLIS: And what are those?

MS. QUINN: Well, as I said, I know that you-all have some form of provisional balloting. I know that you-all have some kind of statewide voter registration database. I don't know the particulars, but I do know that those are in effect.

SEN. ELLIS: Enjoy your stay in Texas.

Thank you very much.

MS. QUINN: Thank you, sir.

SEN. DUNCAN: We have from Ms. Quinn an exhibit that I think is entitled "Building Confidence in U.S. Elections," and I believe it is the Carter-Baker Commission Report. Is that correct?

You need to say that into the --

MS. QUINN: Yes, sir.

SEN. DUNCAN: All right. We will submit that in the record as Exhibit 18.

(Exhibit No. 18 marked and admitted)

SEN. DUNCAN: Sen. Fraser.

SEN. FRASER: Cameron, thank you for being here today. We're honored to have you with us. I was actually sitting, listening to your conversation with Sen. Ellis. And you said one thing that I want to make sure that we give, you know, an "attaboy" to,
because it's something that -- the message that I continue trying to project is the fact that your goal at the Commission was to enfranchise as many voters as possible. And I think that is my goal by the legislation I'm laying out, that I'm hoping by the bill that I am laying out that we will encourage people that have been discouraged in the past and give them a reason to go back and vote.

MS. QUINN: Yes, sir.

SEN. FRASER: I really just have a couple of questions I wanted to clarify. I'm looking at the data that came back -- obviously, we had the discussion about the editorials, and then I had the Executive Summary of the report. But on the letters from the co-chair that is signed by both President Jimmy Carter and Secretary of State James Baker, right in the middle of the letter the statement, "We are recommending a photo ID system for voters designed to increase registration with a more affirmative and aggressive role for states in finding new voters and providing free IDs for those without driver's licenses."

I believe I heard you say, and it appears that has been somewhat of a theme, is that, obviously, the totality of the entire report,
everybody would like to get all of that put together. But as we do in legislation, we don't get everything we want. We take what we can get, put the small pieces together, put some of the bricks in place and hope we keep stacking them up. I'm assuming that was what you're saying, based on the fact that we're only addressing a photo ID bill today, that it was the goal of the commission?

MS. QUINN: Yes, sir. My understanding is that, as I've said, Texas has certain pieces of this already in place. This is another piece of it that Texas is trying to put in place.

SEN. FRASER: And I would add to that, in the Executive Summary, you know, they had multiple things, then a first, second and third. The second thing that is listed in the Executive Summary is to make sure that a person arriving at the polling site is the same one who is named on the list. And of the common things or the things that I continues to try to emphasize today, that's what this bill is all about.

My goal is that when someone walks in and represents them to be, you know, Tom Jones, I want them to make sure that is really Tom Jones and they have some way of verifying it. I believe, by reading what you're saying, that was the intent of the REAL ID
and the fact that y'all are trying to -- based on what
you say, you want to make sure that the person
arriving at the polling site is the same one who is
named on the list. Is that --

MS. QUINN: That's certainly one of
those points. I think the other important point is
that the perception that such kinds of things cannot
occur is also important. And I have read before the
quote from Page 18 of the report: "While the
Commission is divided on the magnitude of other
fraud . . . there is no doubt that it occurs. The
problem, however, is not the magnitude of the fraud.
In close or disputed elections, and there are many, a
small amount of fraud could make the margin of
difference. And . . . the perception of possible
fraud contributes to low confidence in the system."

SEN. FRASER: In the research that the
commision did during the time the commission was in
place, did y'all get into the area of trying to look
at and identify that there was in-person voter fraud
either suspected or going on in the United States?

MS. QUINN: The report actually talks in
an earlier provision on Page 4 about some of the fraud
that they had found and talked about the Washington
State and Wisconsin elections in 2004. And
specifically says, "In Milwaukee, Wisconsin . . . more than 100 people who voted twice" -- excuse me. I'm taking this out of context.

In Milwaukee, Wisconsin, investigators said they found clear evidence of fraud, including more than . . . 100 people who voted twice, used fake names or false addresses, or voted in the name of a dead person."

SEN. FRASER: Now, these were in-person votes?

MS. QUINN: Well, as far as I can tell, that's the case. You know, this has been a few years, and I don't recall all the details behind the report they cited, and I had not brought that with me to check today. I would be more than happy to check it and get back to you.

SEN. FRASER: Thank you very much.

Thank you for being here today.

MS. QUINN: It's my pleasure.

SEN. DUNCAN: Sen. Van de Putte.

SEN. VAN de PUTTE: Thank you, Mr. President.

Thank you very much for coming to appear today. And if you saw me going like this (indicating), it's because you have a really nice soft