voice, but I was straining on this side. So I wanted
to ask for some clarification.

I really had heard about the
commission's work and the validity of the report, and
they made several recommendations. First of all, I
think the recommendation concluded that we needed to
have a REAL ID to possibly use for voting purposes.
Is that not correct?

MS. QUINN: They recommended that that
was a very good choice to use, yes.

SEN. VAN de PUTTE: And I'm looking at
the report here on Page 19 that said, "For the next
two federal elections, until January 1, 2010, in
states that require voters to present ID at the polls,
voters who fail to do so should nonetheless be allowed
to cast a provisional ballot, and their ballot would
count if their signature is verified. After the REAL
ID is phased in," and they think it's -- according to
this report, it was supposed to have been phased in in
January of 2010 -- that "voters without a valid photo
ID, meaning a REAL ID or an EAC-template ID, could
cast a provisional ballot, but they would have to
return" in 48 hours to present something. Was that
the recommendation?

MS. QUINN: That's certainly covered on
Page 19 of the report, yes, ma'am.

SEN. VAN de PUTTE: My question is, in all of this, was there ever any work done to account for the number of naturalized citizens that would be participating that would not have the type of documentation that would be required?

MS. QUINN: I'm not aware of such information. That doesn't mean it's not here. And again, I would be happy to look into that and get back to you.

SEN. VAN de PUTTE: Was there ever any work done before the commission recommendations about -- because it talked about in particular African-American voters -- but the access to get an ID for Hispanic voters?

MS. QUINN: Again, ma'am, I do not recall any such thing, but I would be happy to check into it and get back to you.

SEN. VAN de PUTTE: However, the report did note that the priority population gender-wise who did not have photo ID was women. Is that not correct, as affirmed in the report?

MS. QUINN: They were concerned about any population that would have trouble getting voter identification, and that's why they suggested that it
should be free and that states should affirmatively
try to make sure they're reaching out to populations
that would be less likely to have identification.

SEN. VAN de PUTTE: And identifies in
the commission report the No. 1 population that lacks
a photo ID as women?

MS. QUINN: Correct.

SEN. VAN de PUTTE: Yes.

MS. QUINN: I'm relying on the fact that
you think there is a place in here where it says that.
I do not specifically recall it. But I'm happy to
agree with you, that they were concerned about all
categories.

SEN. VAN de PUTTE: I wanted to ask you,
the commission's report also asked that states use a
unique identifier. Can you quantify for us, with
regard to photo IDs, what is a unique identifier?

MS. QUINN: I think the reference to
unique identifiers was talking about a number, a
unique number identifier. I will say, however, that
photographs are, in their own way, a unique
identifier.

SEN. VAN de PUTTE: Well, I think,
according to the commission, the unique identifier has
to be a number. In the case of the REAL ID, that
number is dictated to be your social security number.

MS. QUINN: Yes.

SEN. VAN de PUTTE: Other states have chosen the route of privacy and not having identify some sort of numbering system that they have. But, of course, as we know with the rulemaking currently having gone forward on REAL ID, that is a social security. My question is, on the unique identifier that's a social security number and with the photo ID, was there ever any work done when naturalized citizens' names do not correspond to the identifier?

MS. QUINN: Not that I'm aware of, but I'm happy to check into that and get back to you.

SEN. VAN de PUTTE: And the reason I ask you is, for naturalized citizens, particularly those coming from Spanish speaking counties, the mother's maiden name is the last name.

MS. QUINN: Yes, I know.

SEN. VAN de PUTTE: So the father's name is actually in the middle name. So when you're a naturalized citizen, your papers or your identifier, I would have been listed as Leticia San Miguel Aguilar, even though Aguilar, my mother's maiden name, not part of any identification or any papers that I would have here; and, yet, the unique identifier would be a
social security.

For our naturalized citizens, which last year were 53,000 in this state -- the biggest increase that we've ever had -- the identifier would not match up with the name, because in Spanish surnamed individuals, the mother's maiden name goes last.

Was there any work done, to your knowledge, at the commission or any work that you know of to note that this would be a very different type of discrimination to be able to prove up simply because the cultural norm is one which the mother's maiden name is last?

MS. QUINN: Again, Senator, not that I'm aware of, but I would be happy to check into it.

SEN. VAN de PUTTE: Thank you. The last question that I have is, since in Texas -- you do know our demographics?

MS. QUINN: Not particularly well, ma'am. I would be happy, if you want to refresh my recollection.

SEN. VAN de PUTTE: Well, my work is that I understand that in the commission there was a former Atlanta mayor, Andrew Young on the commission. Is that correct?

MS. QUINN: No, ma'am. He actually --
SEN. VAN de PUTTE: Was he an advisor?

MS. QUINN: No, ma'am. He appeared before the commission at a private dinner and spoke with them.

SEN. VAN de PUTTE: So the document that you have on the commission and the recommendations on the voter integrity, which commissioners were that, that were Hispanic?

MS. QUINN: Hold on just one second, and I will tell you those who seemed to have an Hispanic surname. I cannot tell you necessarily that they are the only commission members who are Hispanic.

What did I do with that? Here we go.

The only one who has an Hispanic surname, and he was President of the National Council of La Raza, is Raul -- Yzaguirre?

SEN. VAN de PUTTE: That's correct.

Thank you. I wanted to make sure that the recommendations fit, because there's very little in the commission. And part of our job here is to make sure that whatever we enact doesn't unduly burden. And most of the work cited has been done using African-American and not Hispanic populations, given that the states that have enacted these types of laws have not had a significant amount of Hispanics. So I
appreciate that and hope that your visit here continues to be fun for you.

MS. QUINN: Thank you very much.

SEN. VAN de PUTTE: Thanks.

SEN. DUNCAN: Sen. Williams.

SEN. WILLIAMS: Thank you, Mr. Chairman.

And, Ms. Quinn, thank you for joining us today. I'm sorry for the late hour. I would like to direct the committee's attention to the report. You've made several references to different portions of it. But on Page 69 of the report where the conclusions are drawn, if you would join me there.

And I would ask the committee to direct their attention to Page 69. And they refer to here -- really, we've heard about 87 recommendations in all this. There's really five pillars, as they refer to them here, five main themes that run throughout this entire report about the recommendation, and I would like to visit with you about those a little bit.

They say in the first one, "... we propose a universal, state-based, top-down, interactive, and interoperable registration list that [will], if implemented successfully, [will] eliminate the vast majority of complaints currently leveled against the election system."
Now, that is very lofty language and lofty goals that we have here. But I believe -- my recollection -- I've served on the State Affairs Committee here which considers election-related legislation. And my recollection is that the HAVA legislation that we considered there, the Help America Vote Act, which we were required to implement and phase in over a couple of election cycles, is what addressed this concern.

We refer to it in Texas as the TEAM project over at the Secretary of State's office. So is that what you were making reference to? You were making a more broad reference. I'm trying to get a little more specific here.

MS. QUINN: Yes, Senator. When you mentioned TEAM, I remembered that Ann McGeehan, when she would come to the elections meetings would talk about TEAM.

SEN. WILLIAMS: Okay. And then secondly is the issue about photo ID. And, of course, that's what we're debating here with 362. And, of course, we're still struggling with the implementation of the REAL ID Act, as many states are, but we're making progress toward that.

And then third and finally -- or not
third and finally -- but thirdly, they say they would propose measures that would increase voting participation by connecting registration and the ID process. Now, I don't know that we've implemented anything new since the Carter-Baker Report came out. But would this include -- you know, we have here in Texas a couple of weeks of early voting where you can go and -- convenience voting it's often referred to.

So the election really doesn't happen on one day; it happens over a couple of weeks. And typically, what happens, it will start on a Monday, it will include a weekend voting time. And then convenience voting will often conclude on the Friday before the election following on Tuesday. Would that be the sort of thing that they're referring to here, to make it more convenient for people to vote? I mean, that's not something new that we've done, but we've had that here for a long time.

MS. QUINN: Well, I believe that would be one of the kinds of things they were referring to. There's a fairly significant number of them.

I think also you-all have a witness coming from Houston who will be talking about the electronic votes that I think they are experimenting with. That certainly is the same kind of thing --
SEN. WILLIAMS: Right.

MS. QUINN: -- that ties voter registration and identification and is intended to make things easier.

SEN. WILLIAMS: Right. What I was going to say here, we have so many people now in our state registered to vote when they get their driver's -- if they have a change of address, and that's something that we actually implemented when the motor voter laws came into effect back in the mid-nineties sometime.

MS. QUINN: Yes.

SEN. WILLIAMS: So those are the kinds of things that we're referring to here, I think. And I just want to make sure that -- and then the fourth thing is this component -- I would refer to it as an educational component, and that is to help voters become more aware of voting and what they need to do and what's involved in all that.

And so we have -- the Secretary of State's office -- and I don't pretend that I would be an expert on it -- but our Vote Texas Project that worked through the Secretary of State's office was a HAVA-compliant voter education project. Was that commonly done when HAVA was enacted, to try to move these things forward?
MS. QUINN: A lot of states, after the passage of HAVA, used some of their HAVA funds to, in fact, increase voter communications and voter education, because in many cases -- and I know it's certainly true in Virginia -- at the state level, I have not only zero budget for voter education, but it was not considered to be part of my mandate as a state official prior to HAVA.

SEN. WILLIAMS: Right. And then their final recommendation was the restructuring of the system by which elections have been administered in our country. They propose the Election Assistance Commission and so forth. I'm not sure what all this means. I would have to dig into the report. It sounds pretty dramatic. But would this include things like electronic voting or is that really more in the stuff -- I know we have a lot of educational components in my area related to electronic voting. They make sure -- you know, they put these electronic voting machines in supermarkets and libraries and things like that, where people can try them out before election day gets here. Is this referring to that or is it a more sweeping change?

MS. QUINN: Well, what they had in mind was the concern that was expressed in 2000 with
Catherine Harris and at other times with other election officials who often are, or have been in the past, sharers of a candidate's committee that was running on the ballot.

SEN. WILLIAMS: Yes.

MS. QUINN: That varies across the states. In Virginia, for example, while I was not legally mandated not to, it was understood and it was tradition and it was always done in Virginia, that no election official at the State Board of Elections would be involved in any ballot on the ticket, from president down do the lowest ballot on -- or the lowest item on any ballot in the state.

SEN. WILLIAMS: Right.

MS. QUINN: So I would not, for example, ever contribute money to any race that was in the state. I would not be involved as a volunteer. I would not be involved certainly in any official capacity. And I think that's the kinds of things that they were getting at, was that election officials, while operating as election officials, should stay out of the partisan political fray, to the extent that they were not themselves on a ticket. Can I --

SEN. WILLIAMS: So, for instance, in a county like where I live, in Montgomery County, we
have an election administrator who doesn't run for
office, and it's a non-partisan position. She's hired
by the Commissioners Court or what other places will
call the Board of Supervisors that administers the
elections in our county. So that's the sort of thing
that you're talking about?

MS. QUINN: Yes, sir. I love to tell
this. I had a deputy when I was at the state board
who had a phrase I loved. She says, "When I get here
in the morning, I park my donkeys at the door."

SEN. WILLIAMS: There you go. So I
guess then in summary, as I look over this -- because
it had been asserted by Sen. Ellis earlier that really
we were kind of just picking this one requirement out
of the report. It would seem to me that out of the
five areas that they have, Texas has actually recently
made very substantial progress on at least four of
those things and maybe some progress on that fifth.
I'm not really sure what that fifth one means. It
seems like it's pretty -- you could pretty broadly
define and put a lot of things in that category.

So thank you again so much. Would you
agree with my conclusion there, that it's not really
fair to say that there's only one thing that we're
doing out of this, we've actually made substantial
progress? And I'm sure that that will help jog -- since Sen. Ellis and I served on that State Affairs Committee together, I'm sure that will help jog his memory about some of the good work we've done together there. As I recall, all of these measures passed out of the committee without any opposition and passed -- my recollection is that they passed this body with a 31 to nothing vote. So thank you very much.

MS. QUINN: Thank you, Senator.

SEN. DUNCAN: Thank you, Sen. Williams.

Ms. Quinn, there are no other senators queued up, so you are excused. Thank you for your testimony.

MS. QUINN: Thank you, sir.

SEN. DUNCAN: Sen. Wentworth.

SEN. WENTWORTH: Mr. President, I offer as exhibit -- and the appropriate number, I think 18 or 19 -- letters --

SEN. DUNCAN: Hold on a minute. Let's get the correct number so that it will be identified in the record.

The next number is 19, so what you're discussing will be Exhibit 19.

SEN. WENTWORTH: Yes, sir, letters involving the Federal Election Commission that was
discussed by a previous witness.

SEN. DUNCAN: Well, okay. Bring it forward.

Okay. Exhibit 19 is a letter from the letterhead, dated June 29, 2007, to the Honorable Dianne Feinstein and the Honorable Robert Bennett. And it is -- I think the letter is signed by --

SEN. WEST: Mr. President --

SEN. WENTWORTH: Signature is shown on Page 18, Hans A. von Spakovsky.

SEN. DUNCAN: Hans von Spakovsky.

SEN. WENTWORTH: And in addition, Mr. President, there were letters also recommending his appointment to the Federal Election Commission.

SEN. DUNCAN: All right. There are several letters that are, I think, attached as exhibits to the letter dated --

SEN. WENTWORTH: Yes, sir.


SEN. WENTWORTH: Actually, there are a couple of attachments to that, and then there are other separate letters of recommendation to the Federal Election Commission.

SEN. DUNCAN: Okay. So those would be separate letters, not attached to 19?
SEN. WENTWORTH: Yes, sir. There are 14 such separate letters.

SEN. DUNCAN: So you're going to present all of those letters as one exhibit, Exhibit 19?

SEN. WENTWORTH: Yes, sir; yes, sir.

SEN. DUNCAN: All right. It will be received.

(Exhibit No. 19 marked and admitted)


SEN. GALLEGOS: Mr. Chairman, whatever was just introduced by Sen. Wentworth, I would like to see a copy of whatever was introduced.

SEN. WENTWORTH: Well, Mr. President, I would like to see a copy of the other 18 exhibits that have been submitted to the Secretary, without any of us seeing any copies of them.

SEN. LUCIO: I would like.

SEN. GALLEGOS: I mean, you know, I just don't know what was -- but if it's entered into the record, I would like to see a copy of it.

SEN. WENTWORTH: I'll be glad to make a copy for him, Mr. President.

SEN. DUNCAN: We'll make a copy for you, Senator. We'll make copies for whomever wants one. Of if everybody wants one, that will be fine.
SEN. WENTWORTH: That's fine with me.

SEN. DUNCAN: Sen. Shapleigh?

SEN. SHAPLEIGH: Mr. Chair,

Sen. Wentworth's offer of that letter has jogged my memory. Here are letters from the Brennan Center against Mr. Spakovsky, members, signed by one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen -- seventeen members of Congress against his nomination, letters from Common Cause against his nomination, letters from the Civil Rights Committee -- Lawyers Civil Rights Committee against his nomination -- letters by the Campaign for Legal Center and Common Cause against his nomination and letters from the members of the United States -- I'm sorry -- from the Campaign Legal Center that I would like to include in the record, to make it more complete, as Exhibit 19.

SEN. DUNCAN: Well, I think yours would be a separate exhibit. Sen. Wentworth has offered up an Exhibit 19, which would be admitted into the record. And you are offering Exhibit No. 20, which contain the letters that you have just described to the body. Is that correct?

You'll need to say that on a mike, please.
SEN. SHAPLEIGH: I would offer these letters to make them a part of the record.

SEN. DUNCAN: All right. Thank you very much. Bring them forward and well put them in the record.

(Exhibit No. 20 marked and admitted)

SEN. WENTWORTH: Mr. Chairman?

SEN. DUNCAN: Sen. Wentworth.

SEN. WENTWORTH: Could I, since Sen. Shapleigh has been more precise about the letters, may I do the same for Exhibit 19?

SEN. DUNCAN: You have the floor.

SEN. WENTWORTH: One letter is co-signed by six members of Congress, recommending his nomination to the Federal Election Commission. We have letters from the Secretary of State of Kentucky; Secretary of State of Indiana; the County Clerk of Harris County, Texas; the Chairman of the Forsyth County Board of Elections in Georgia; Mr. P. K. Brunelli with the Federal Voting Assistance Program of the Department of Defense at the Pentagon; from Mr. Wendron Close from the United Kingdom; from Tom Lowe, Fulton County Commissioner in Georgia; Mr. Frank Strickland, who is Chairman of the Board of Directors of the Legal Services Corporation; United States
Senator Johnny Isakson; T. Rogers Wade, President of
the Georgia Public Policy Foundation; Wesley Kliner,
Vice Chairman of the United States Election Assistance
Commission Board of Advisors; and, finally, Ray
Martinez III, former Commissioner of the United States
Election Assistance Commission.

Thank you, Mr. Chairman.

SEN. DUNCAN: It will be submitted.

Record noted.

Members, our next witness is Dr. Toby

Moore. Will Mr. Moore step up.

And you have 10 minutes, Mr. Moore.

Thank you.

DR. MOORE: Thank you. And thank you to

the senators for the opportunity to speak to you
today.

SEN. DUNCAN: You need to state your

name, too, and who you are representing.

TESTIMONY BY TOBY MOORE

DR. MOORE: My name is Toby Moore, and

I'm a Project Director in Elections Research for the

Research Triangle Institute, a non-profit,

non-partisan research institute. I'm speaking on my

own behalf today.

Before joining RTI in 2007, I was a
project manager for the Carter-Baker Commission on
election reform at American University. From 2000 to
2006, I was the geographer of the voting section of
the Civil Rights Division of the U.S. Department of
Justice. My Ph.D. is from the University of Iowa in
geography, which makes me the first non-attorney
witness you've had. When we get to the questions, I
guess we'll find out if that's a help or a hindrance.

My experience is in election data. I'm
currently conducting the U.S. Election Assistance
Commission's 2008 Election Day Survey. In that
capacity, I've had the pleasure of working with Ann
McGeehan, Kim Thole and the very fine staff in the
Elections Division. I became involved in voter ID
research for the first time in 2005, as part of the
team that conducted the review of the 2005 Georgia ID
law for the Department of Justice.

Voter ID has obviously become a very
partisan issue and an emotional one for many people.
I think that my testimony today, I'll concentrate on
really two things that I think will be the most use
for the Senate. First, I wanted to provide as
objective a survey of the current research in the
field as I can. And second, based on my experience
working on Section 5 pre-clearance cases at the
Department of Justice, I discuss the substantial challenges the state faces in trying to meet its burden under the Voting Rights Act. I also would be welcome to talk with you about the Carter-Baker Commission and its recommendation, although in the interest of time, I may leave that for the questions.

We should know more about the effects of voter ID than we do. In many ways the research community has failed policymakers by not producing better findings. However, some recent studies have come up that I think are finally providing us with an initial picture of the group of people who don't have voter ID and the demographics of that group. To begin with, I think it is clear from public opinion surveys that most Americans support requiring a photo ID in order to vote.

There have been kind of three approaches to trying to identify those without IDs and to determine their demographics. The first approach has been to try to match between data bases, between voter registration databases and Department of Motor Vehicle databases, for example. That has generally not proven to be successful. Those databases are very difficult to match between. There is some interesting information to come out of those attempts. But in
general, I would encourage you to avoid any kind of database matching to arrive at your information.

The second approach -- and we've heard much about this today -- has been to look at the impact on turnout. There are two ways to do that. The first is to use very sophisticated statistical modeling techniques to try to determine before and after ID laws where there is a drop-off in voting. The results have been across the board. Some studies have found increases, some have found no change, and some studies have found decreases, especially among minority voters.

There is a forthcoming paper from Lorraine Minnite and Robert Erickson that assesses these attempts at modeling turnout changes. They conclude that our tools and data are inadequate for detecting any impact. I would encourage you to look at that paper. We simply don't have good enough data or statistical tools that would allow us to detect the changes in turnout that could be traced to voter ID laws. Even worse, though, are these blunt attempts to use aggregate turnout to try to detect changes in turnout that can be attributed to voter ID?

I think it's important to remember that voter ID laws, whether you're in favor or opposed to
them, are designed to do one thing, and that's to
reduce voter turnout, if only among fraudulent voters.
That makes it impossible, to my mind, to be able to
interpret the results of these findings.

If turnout goes up after a voter ID law,
then why have you not been able to stop the fraudulent
votes and have that appear in the turnout? Basically
what happens, I think, is that voter turnout -- the
impact of voter ID is small enough that it's swamped
by other factors such as Obama running, such as
Georgia and Indiana being seen at battleground states
and presidential candidates putting resources in and
voters coming out. I mean, comparing Georgia and
Indiana, which we're seeing as competitive states to
Mississippi and Illinois, is the sort of facile
analysis that I just don't think holds up very well.
It's certainly not social science, and I don't think
it's even very good rhetoric.

On the issue of whether voter ID causes
turnout to increase by boosting confidence, I would
point you to a recent paper by Ansolabehere and
Persily who surveyed voters and found that perceptions
of voter fraud had no impact on turnout. It's an
interesting idea, but I know of no reliable
information that traces increased willingness to
participate to a belief in integrity in elections.

Finally, I think that the survey, the research that's most useful is the survey research that's come out, including one done by the Carter-Baker Commission that I initiated in 2006. They found that 1.2 percent of registered votes in three states lacked IDs. This may seem like a small number. But when applied to Texas in 2008, it would have meant that approximately 162,901 registered voters would have lacked a government-issued photo ID.

Because of the way the study was designed, that is probably a floor, and there is reason to think that the number could be substantially higher in Texas. But I would think that the 162,000 number is a very defensible floor for the population we're talking about.

More importantly, the Carter-Baker sponsored study found that African-Americans were more than four times more likely than whites to lack photo ID. Women made up nearly all of those who did not have photo ID. Nearly all of those who lacked ID were Democrats. And 88 percent of those without photo ID had a household income below $25,000 a year.

Now, this was a survey of registered voters. When your law goes before the Department of
Justice, they're also going to be considering its impact on voters who are not registered but who are eligible to vote. And there is reason to think that that pool of voters is even more disproportionately minority and maybe larger in proportion to their size of people who lack ID.

Now, finally, as we all know, this is a law that will have to go before the Voting Rights Section, Civil Rights Division of the Department of Justice to be cleared under the Voting Rights Act. The state should not take comfort in the Supreme Court's upholding of the Indiana voter ID law. As the Bush Administration argued when federal courts blocked the 2005 Georgia ID law that had been precleared, the Section 5 analysis is distinct from the constitutional analysis. The Section 5 review will be a comparison of the current Texas law to the proposed law. The state will be required to prove that its proposed law does not deny or abridge the right to vote on account of race, color or membership in a language minority group. I expect that the Obama Justice Department will put the burden on Texas to prove its case, unlike the Bush Administration's handling of the 2005 Georgia law.

Not knowing the effect of the law on
protected groups -- African-Americans, Hispanics, language minority groups and others -- will be an invitation to the Department of Justice to object on the basis of the state having not met its statutory burden.

Specifically, based on my experience in the Georgia case and other Section 5 cases, I expect DOJ at a minimum will look for:

First, evidence that Texas knows the number and demographic make-up of eligible voters and registered voters who lack the required ID;

Second, well-developed and well-funded public education programs to make voters aware of the new requirements, initiated well before the implementation of the new law. Again, this is what Georgia and Indiana did;

Revamped poll worker training to emphasize the correct enforcement of the new, more complicated ID requirements;

Well-developed and well-funded programs to distribute the required IDs. I don't think, from my reading of the current bill, that the provision for free ID will be adequate;

Substantial evidence of the voter impersonation problem that the law addresses;
And finally, a detailed discussion of why less retrogressive alternatives, including use of an affidavit fail-safe, were not adopted.

Texas faces a substantial cost on two fronts: First, to develop and fund the necessary supporting programs to fairly implement any law; and second, to develop a convincing submission to what I would expect to be a skeptical Civil Rights Division.

In the questions period, I would be glad to talk about some of the information that I have on the cost of these programs, on the specific recommendation of the Carter-Baker Commission and on some of the less retrogressive alternatives that Texas might want to consider.

Thank you.

SEN. WENTWORTH: The Chair recognizes Sen. Van de Putte.

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

QUESTIONS FROM SENATE FLOOR

SEN. VAN de PUTTE: Dr. Moore, thank you for being here today. And there are a few things that I would like to ask to make sure that I understand the impact of your testimony.

I know that we've said that President
Jimmy Carter advocated for a photo ID as part of the Carter-Baker Commission. Can you expand a little bit on that? I know that part of your testimony just touched on it. But what particular point are you concerned about with regard to the recommendations in the commission that have been part of the record that we are going to put into the Committee of the Whole and your observations as to the implications of such?

DR. MOORE: Thank you. Again, I was Program Manager at American University and worked on the follow-up work to trying to get the commission's 87 recommendations implemented. And to me, the ID law -- and in our discussions, we worked with Congress in 2006 during the debate on ID laws there and working with members to understand what the Commission was really trying to do.

And the commission really had a two-pronged approach. The first was yes on voter ID, but the second was to use the voter ID as a way of expanding participation and expanding enfranchisement. And it called for a very aggressive role on the part of the states to take the lead in getting people registered and in getting people the voter ID that they would need under the new law.

And I think it's telling that the
Georgia law of 2005, which I think is very close to
the present state of the Texas legislation, triggered
the opposition from Secretary Baker and President
Carter, because it failed in these important facets.

Also, as you talked about earlier, the
phased-in implementation to allow voters to cast
provisional ballots before they lost their vote. And
the commission was very interested in replacing the
patchwork national quilt of ID laws with a national
standard. What the commission was very interested in
was one national standard.

And so what you have now is I think in
some ways exactly what the commission feared, which
was a piecemeal approach toward implementing ID laws
and which will have very dramatic differences between
states such as Georgia and Indiana and other states.

SEN. VAN de PUTTE: Thank you.

Dr. Moore, I know that the commission
made these recommendations. But given your work, what
evidence is there that those who lack photo ID are
more likely to be women?

DR. MOORE: Well, I think some of the
best evidence is the survey that the commission
sponsored in 2007 which found that nearly all the
people who responded to their survey -- and they
surveyed 2,000 registered voters in three states -- almost all of their respondents who did not have ID were, in fact, women.

This is doubly troubling when you're talking about ID, because women run into name problems. Women's names change. They marry; they divorce. And if your ID doesn't match the name on your registration, then you run into more confusion from that, so that's another reason to take that problem even more seriously.

SEN. VAN de PUTTE: And, Dr. Moore, I know that we probably don't have the data in Texas, but if you were to use that American University survey approach that you described and apply it to Texas, do you have some sort of idea, given that that is a good survey instrument, how many voters in Texas would totally lack a photo ID?

DR. MOORE: AS a minimum, I think somewhere around 162,900, which is applying that same ratio. That ratio is probably low for Texas, because that survey was based in states like Indiana which had a very high ID ownership as a result, in part, because of the voter ID law. So I would expect that Texas' actual number would be somewhat higher than that.

SEN. VAN de PUTTE: Well, if it was even
8 percent and we have about 13.7, 13.6 million voters, if it was even a more conservative estimate that only 8 percent, would that be a substantial number that would have difficulty in meeting any pre-clearance from the Department of Justice?

DR. MOORE: Yes. I think that's actually a higher estimate, the 8 percent. I think that if you -- if Texas were to investigate this and come up with that figure and the demographics of the group without ID, you would have a very, very difficult time getting it through pre-clearance or through federal courts if nearly one in 10 voters lacked ID.

SEN. VAN de PUTTE: And as we know that this is a foregone conclusion, at least here in the Texas Senate, in the event that our state would seek approval from the Department of Justice, who bears the burden of proving up the effects of the photo identification?

DR. MOORE: Well, unlike in the federal court cases under Section 5 pre-clearance review, the State of Texas would have that burden.

SEN. VAN de PUTTE: So those of us or those groups who would claim that it would be discriminatory do not bear the burden, it's the state
that would have to prove that the voter ID requirement
does not have a discriminatory impact. Is that
correct?

DR. MOORE: That's correct.

SEN. VAN de PUTTE: So the Department of
Justice -- help me understand -- the Department of
Justice doesn't have to produce affirmative evidence
of how the ID laws will discriminate against minority
voters to deny pre-clearance, does it?

DR. MOORE: No.

SEN. VAN de PUTTE: So the Department of
Justice can block a photo ID bill from taking effect
if they find that the state has failed to show that
the law is free of a discriminatory purpose or effect.
Correct?

DR. MOORE: That's correct.

SEN. VAN de PUTTE: So what kind of data
would the state need to prove it up?

DR. MOORE: Well, I don't think that the
threshold will be a definitive answer. I mean, I
don't think there is a definitive answer. Even if you
funded a well-funded survey, you would still have
error rates around your survey responses and so on.
But I think what the Department of
Justice will look for, which is what we looked for
when I was there, would be a good-faith effort to identify that population and then have built the legislation to address any problems you found with it. But I think the first step is to try to identify that pool of people who don't have ID and find out what is their makeup in regards to the protected groups under Section 5.

SEN. VAN de PUTTE: So if the data is not known by the state or cannot be proved or produced by the state, they cannot show that the voter ID bill meets the requirements of the Voting Rights Act requirement?

DR. MOORE: That's right.

SEN. VAN de PUTTE: And so should we be concerned, as a state, about eligible but non-registered voters in this?

DR. MOORE: Eligible but non-registered voters would be protected by this Section 5 of the Voting Rights Act.

SEN. VAN de PUTTE: So, in other words, this would be folks that would be eligible, but for our efforts would really not end up being able to cast a ballot. Is that correct?

DR. MOORE: That's right. They will enter into the analysis.
SEN. VAN de PUTTE: You mentioned just briefly at the end that other states that have implemented this, Indiana, of course, didn't have to go through the process that we do. But, you know, Georgia had somewhat. I don't know if they have the language diversity that we have, in particular these language-based groups.

But because we have that in our state and we are -- the new data shows that over half of our first graders are actually Hispanic, and because of our high number of naturalized citizens that are in Texas, what would it cost a state like Texas, given what's occurred in other states, to develop and implement the public education component that again the Department of Justice would say would prove up the state's ability to ensure that there wouldn't be discrimination? I mean, what kind of costs are we talking about?

DR. MOORE: Well, if you look at Georgia's example -- and again, Georgia is a Section 5 state -- and remember that the 2005 law that Georgia passed, which is similar I think in many ways to this law and that was pre-cleared by the Justice Department, was blocked by federal and state courts and abandoned by Georgia itself.
In fact, the Bush Administration is pretty much the only people left to defend the 2005 Georgia law. They went back to the courts with a revamped 2006 law. This law had provision for free ID. This law opened offices across the state in every county. And this law included a public education campaign of half a million dollars a year targeted just to informing voters of the effects of voter education.

Now, as you said, Texas being a much larger state and with the language diversity that you have, with the multiple media markets you have, you're talking about some multiplier of that half million, I think, if you're going to make an effective effort to inform people of the new voter ID requirements.

SEN. VAN de PUTTE: And let me clarify this, because what you're telling us is that the Department of Justice said that Georgia had to go back and revamp because they didn't have these efforts. And, Dr. Moore, I don't know if you've seen, but our fiscal note, which is the estimate of our Legislative Budget Board, to implement the provisions of this bill is zero -- zero, nada, nothing, zilch, nada.

And so if a state like Georgia, which is much smaller, was required, because of pre-clearance
and Voting Rights Act, to put an effort, you would assume that it would take Texas a little bit more than zero dollars to do the outreach, to inform the voters, to do the training of our thousands and thousands of election judges at the polling precincts. Is that correct?

DR. MOORE: Yes. I think that unless that is part of the legislation and that funding is provided for before it goes to pre-clearance, the Justice Department will be very skeptical that that would ever be really implemented effectively.

SEN. VAN de PUTTE: So it's not just the costs that would be incurred in the change in the laws, the training, the outreach, but -- for example, in the State of Texas, in our major metropolitan areas, the locations at where citizens can go get a driver's license are all outside the loops. In Bexar County, there is one inside Loop 410. I think in Houston, there may be -- I don't know if there are any -- but these are where the majority of African-Americans, Hispanics live; yet, there is no office to go get the driver's license or the voter ID. Would this be a significant problem in the viewpoint of the Department of Justice?

DR. MOORE: I think if the minority
populations were, you know, very well integrated and there was no correlation between the absence of an office in minority communities, then, no, that would not be a problem. But if Texas has a situation in which you have large minority communities that don't have equal access to DPS offices where they can go and get the ID, then, yes, I would think that is really going to be a red flag for the Department of Justice.

SEN. VAN de PUTTE: Now, our bill, with the military, the institutional type IDs, the certificates versus papers of naturalized citizens, it's a little more complex than what we've seen in other states. Is that correct?

DR. MOORE: Yes, I think that's true.

SEN. VAN de PUTTE: And so since it's more complex, would you think that that would probably require a little bit more training of those election judges in the polling precincts?

DR. MOORE: I certainly would think so. I mean, I was in Indiana in 2006, in Indianapolis, and observed the election after their ID law. And even in Indiana where they did a pretty good job of instructing poll workers, there was still ample confusion. And what happens is, the first high turnout you'll have, you'll have much longer lines and
room for conflict if care is not taken to train poll workers to be able to fairly implement this new law.

SEN. VAN de PUTTE: And my other question is, again from the other surveys, if 8 percent of the folks lack a photo identification -- and we have about 13 -- what? -- million plus voters, and not the conservative estimate, that would be a million Texans who are currently registered to vote who don't have a photo ID.

DR. MOORE: Yes. And I think what I would say is that the important thing is not for me to have an answer on the estimates of people who don't have an ID but for Texas to have a good estimate. That's what the Department of Justice is going to be looking for. And that's going to be, you know, a significant piece of evidence when this comes to pre-clearance.

SEN. VAN de PUTTE: Well, what this fiscal note tells me is that my state is unwilling to put one penny into any efforts to train, to do information, to do education. And certainly if we're providing maybe the one million who don't have them now, with free IDs, what kind of costs -- I mean, given the costs that were in Georgia for this or in other states, what sort of costs are we looking at?
Yet, I guess we're coming up with imaginary numbers here. Who is absorbing this cost? How much do you think it would cost in Texas?

DR. MOORE: Well, it depends on how you provide the free IDs. The legislation, as I read it now, does not actually provide free IDs. It provides only free IDs to those who will only use the ID in order to vote, which is very different from Indiana and the 2006 Georgia law.

Indiana, when it provided free ID cards when it was considering its legislation, it estimated that the state would lose more than $700,000 annually in lost revenue and additional expenses from providing free ID. Again, you can do the math in Texas, and I expect it would be considerably higher. But I would expect that, you know, free ID -- if the Texas legislation, as passed and sent to the Department of Justice, does not have a strong free ID provision, then it would be markedly different from even the Georgia and Indiana laws.

SEN. VAN de PUTTE: And in your estimate, Dr. Moore, when you've looked at the research and the statistics, a lot of our statistics, we had a lot of new voters in this last election year. But that doesn't account for the citizens of the third
age, our senior citizens that are already registered
but don't have the type of identification required in
this bill. Is that correct?

DR. MOORE: I think there is a general
agreement that elderly people are more susceptible to
not having proof of ID and proof of citizenship. But,
you know, I think the numbers again are difficult to
come by good, solid information on that. But yes.

SEN. VAN de PUTTE: Thank you,

Dr. Moore. I appreciate your answers.

SEN. DUNCAN: Okay. Members, I see a
lot of lights still on this witness. We've been going
now for two hours and 15 minutes. We need to take a
short break for our court reporter.

I'll remind you that we have witnesses
in the gallery that are continuing to -- that will be
public testimony -- that are continuing to wait to be
heard.

The Senate Committee of the Whole will
stand at ease until 9:25.

(Recess: 9:16 p.m. to 9:29 p.m.)

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

Senator Williams, you have the floor.

Oh, before you do that, before I forget
to do this, if you wouldn't mind, let me retract that.

SEN. WILLIAMS: Sure.

SEN. DUNCAN: Dr. Moore has submitted his written testimony for the record as Exhibit 21, and that will be received in the record.

(Exhibit No. 21 marked and admitted)

SEN. DUNCAN: Sen. Williams.

SEN. WILLIAMS: Thank you.

Dr. Moore, I would like to direct your attention and the committee's attention to Page 6 of your testimony where you draw your conclusions. And there's a couple of things I wanted to explore with you there. Where you say, "In fact, there are many ways to reasonably ensure the identity of voters without disenfranchising those without ID an or placing unnecessary barriers to the voting booth. The use of affidavits, in particular, creates a paper trail that allows for the enforcement and analysis. A state could run its elections under this sort of law for an election or two, and then survey those voters who vote via the affidavit. This is the pool of voters who would be affected by an absolute photo ID requirement. If the survey finds evidence of fraud, if the affidavit voters were not citizens or voted on bad voter registrations, the law can be tightened."
So I'm trying to understand what you're suggesting there. Are you suggesting that if we suspect that there is some voter fraud going on, that it's okay to have a little bit of it, until we determine whether it's really there or not?

DR. MOORE: Yes, in a way. I mean, I think what I'm saying is that, given the little that we know about voter fraud, voter impersonation fraud, and the risk of substantial disenfranchisement, that it's worth continuing what has been I think a fairly successful system of elections, in order to get us the data that would allow us to make better public policy choices.

SEN. WILLIAMS: Okay. Well, I think that's -- you know, it's striking to me, in light of some of the conclusions. I mean, the letter from the co-chairs of the Baker-Carter Commission said that, "Elections are the heart of democracy. They are the instrument for the people to choose leaders and hold them accountable. At the same time, elections are a core public function upon which all other government responsibilities depend. If elections are defective, the entire democratic system is at risk."

And then in the U.S. Supreme Court decision on the Indiana case, in the majority opinion,
they specifically talk about voter fraud. And they go
on to say that, "It remains true [however] that
flagrant examples of such fraud in [other] parts of
the country have been documented throughout the
Nation's history by respected historians and
journalists, that occasional examples have surfaced in
recent years, and that Indiana's own experience with
fraudulent voting in the 2003 Democratic primary . . .
demonstrate that not only [is] the risk of voter fraud
[is] real but that it could affect the outcome of a
close election.

"There is no question about the
legitimacy or importance of the state's interest in
counting only the votes of eligible voters. Moreover,
the interest in orderly administration and accurate
recordkeeping [is] a sufficient justification for
carefully identifying all voters participating in the
election process. While the most effective method of
preventing election fraud may well be debatable, the
propriety of doing so is perfectly clear."

And it just seems incredible to me that
you would propose that we allow a little bit of fraud
until we figure out another way. It just seems very
inconsistent with both the Baker-Carter Commission and
the Supreme Court decision.
DR. MOORE: I'm sorry. Was there a --

SEN. WILLIAMS: I mean, do you care to
comment on that?

DR. MOORE: I don't think we know enough
about voter impersonation fraud, notwithstanding the
Supreme Court's decision or Carter-Baker, to
enforce -- to effectively draw up a good voter ID
regime. There is more than one way to make a bad
election system. One bad election system is one
riddled with fraud. Another bad election system is
one we've had in the United States for many decades
prior to the 1960s, which was one that was riddled
with disenfranchisement.

So I think it's a balancing act. And I
think as policymakers, you would be justified in
instituting a law that would allow you to gather
better data. For instance, the Carter-Baker
Commission themselves wanted to phase in their voter
ID requirement and allow people to vote provisionally
and have that ballot counted. So I think the
Carter-Baker Commission is doing the same thing you're
shocked that I would do, but you seem to like their
recommendation. They would seem to be willing to
tolerate that same risk for a couple of elections in
order to move you toward both a fair and safe election
SEN. WILLIAMS: You know, I think it is a balancing act. And although there is a lot you've said tonight that I don't agree with, I do agree with that one point. And, you know, they go on to say in this same Supreme Court opinion that I quoted from earlier that the severity of the burden, of course, is mitigated by the fact that if eligible voters without photo identification may cast provisional ballots that will be ultimately counted, it's unlikely that such a requirement would pose a constitutional problem unless it's wholly unjustifiable. And even assuming that the burden may not be justified as to a few voters, the conclusion is by no means sufficient to establish the Petitioner's right to relief they seek in this litigation.

And so it seems to me that the Court directly addressed that balancing act that you're talking about between the risk of disenfranchising people, which none of us want to do on this floor, and the risk of having an election stolen by false voting, voter impersonation or other things that may go on. And I don't know. Maybe you don't realize that this bill that we're considering contains -- you know, we already have in state law
provisional voting requirements that are consistent
with the HAVA requirements. So there is no instance
where someone would not be able to go in and cast a
ballot under this bill. Are you aware of that?

DR. MOORE: But if the person didn't
have ID, what would happen to their provisional ballot
after they cast it?

SEN. WILLIAMS: Well, and I think we'll
have the Secretary of State testify about that. It's
a process where there is a determination made by the
election judge whether that person was who they said
they were or not. And there is actually a process
that all of us voted for. All 31 of us voted for our
provisional voting process that we have here in Texas,
and it's been cleared through the Department of
Justice. So that provisional voting that we have in
Texas is cleared by DOJ. It meets the Section 5
requirements, and everybody in this chamber voted for
it.

DR. MOORE: Well, I mean, but that's
under a different ID regime. Is that right? I mean,
what was pre-cleared was --

SEN. WILLIAMS: Under our current ID
regime. But the provisional voting -- the law on
provisional voting doesn't change under this bill. So
whoever goes to vote will still be able to cast a provisional ballot and then an election judge, the appropriate official -- I need to let the Secretary of State speak to it, because I don't want to -- I might not have the specific terms correct. But there is a process that has been cleared that we use to determine whether that's an eligible vote. That's under current law. That process isn't touched top or bottom by this. At worst, at the worst, you might have a few more provisional ballots.

DR. MOORE: I'm not understanding how you change the IDs that are required without changing the provisional ballot system.

SEN. WILLIAMS: Well, I would suggest you read our bill and then you would understand it.

DR. MOORE: Well, I did read the bill. Maybe I need to talk to the Secretary of State's office to get a better understanding of that.

SEN. WILLIAMS: Right. Okay. And then finally, a couple of other things that I wanted to just point out. You commented with Sen. Van de Putte extensively about voter education and how important that was. And, you know, the way this fiscal note process works here in our state, there is a careful look at an independent non- -- independent
non-partisan group, the Legislative Budget Board, they
work for every one of us here, and they make a
determination.

And when I went back and looked at this
bill, you know, the reason there's no cost here is,
this bill doesn't address voter education, and so
there would be no additional expense. However, what
you may not know is that the Secretary of State
already has a line item in their budget for voter
education. I'm working to get that number for us now.
We don't know -- I can't tell you off the top of my
head what it is. But it's not as if the state is not
already spending money on voter education. Were you
aware of that?

DR. MOORE: I would have assumed that
you were already spending money on voter education.

SEN. WILLIAMS: Okay. And so what I
think we're going to hear in testimony from the
Secretary of State is that they can absorb the cost of
this in their existing budget.

Thank you.

SEN. DUNCAN: The Chair recognizes
Sen. Gallegos.

SEN. GALLEGOS: Thank you, Mr. Chairman.
Dr. Moore, I have a couple of questions,
kind of like in the line of questions that Sen. Van de
Putte gave you. I do want to, at the proper time,
Mr. Chairman, submit the map I'm fixing to talk about
as an example. And I've got a copy for all the
members.

SEN. DUNCAN: Why don't you go ahead and
send it up now and let's mark it so we'll have a
proper reference in the record.

SEN. GALLEGOS: Give one to Dr. Moore.

SEN. DUNCAN: Exhibit 22 is a map
submitted by Sen. Gallegos. It will be submitted into
the record.

(Exhibit No. 22 marked and admitted)

SEN. DUNCAN: Senator, you can ask your
questions.

SEN. GALLEGOS: Okay. Thank you,
Mr. Chairman.

Dr. Moore, the data that I'm passing
out -- and I will relate to two other maps, because
the one from Houston will suffice. That's my
hometown. And the data is from the Texas Department
of Public Safety, shows that in my home city of
Houston, it is very -- under this bill, Dr. Moore,
that if you look -- members, if you look at the map,
there is no DPS center inside the 610 loop, and the
same is for Fort Worth.

Sen. Davis, there is none inside the 610 loop in Fort Worth.

And, Sen. West, there's only one in the City of Dallas, a DPS center.

What my question is to you, Dr. Moore, if we pass this legislation that mandates that every Texan that wants to vote get a photo ID, that if you look at the map, especially the City of Houston -- or the Houston map -- that most of these folks that probably are going to have to have voter ID are minorities, live inside the 610 loop, socioeconomic welfare is low. They'll probably have no methods of transportation and depend on public transportation to move around.

If we pass the bill, as what you see on that map that I just gave you, Dr. Moore, and the other cities that I described, which inside those 610 loops, the majority of the population is minority in those cities. In looking at preliminary numbers that I've already gotten on total population, in the last 10 years, in Houston, Texas, from 2000 to upcoming 2010 when the census is taken, just in Houston alone the preliminary numbers are 1.1 million in the last 10 years, the majority of those Latino, in Houston -- in
Houston.

So with that in mind, Dr. Moore, what I would like to ask you is, do you believe that if there's no DPS centers, were this bill by Sen. Fraser, if there's no DPS centers in that 610 loop, that that will become a hardship -- if the state mandates for a photo ID and I, living inside the loop, without a car, public transportation only, it's going to create a hardship for me to get to that DPS center, especially if there's none inside the 610 loop in Houston, in Fort Worth, only one in Dallas, Texas. And that's going to create a hardship for me as living inside the city, low income, try to catch public transportation and at least try to get to one of these that are outside the loop. Let me ask you, in your professional opinion, Dr. Moore, do you consider that a hardship for those people living in there if we pass this piece of legislation, that creates a hardship on these people?

DR. MOORE: I'll answer in this way:

The Justice Department has a very sophisticated geographic information system with all the census data loaded into it, because of the redistricting work. And it's a very simple matter to sit down and, within 15 minutes, create buffers around each of these points
and calculate the minority population and how much of
the minority population lives within one mile or
10 miles or whatever.

Those numbers were a serious detriment
to Georgia in 2005, where Georgia didn't have
Department of Motor Vehicle offices in many counties
or in the City of Atlanta. It was a problem for the
federal judge who struck down Georgia's law, and I
think it's something that's going to take close
analysis to determine the differential impact that is
certainly going to be a red flag and something the
Department of Justice is going to look at very
closely.

SEN. GALLEGOS: Okay. So the answer is
yes on -- let's say a potential hardship for those
folks in there if we mandate every Texan to get a
photo ID that wants to vote?

DR. MOORE: Lack of access to the places
to go to get that ID will be seen as a hardship on
minority voters, who tend to be poor, tend to have
less access to transportation.

SEN. GALLEGOS: Thank you, Dr. Moore.


SEN. SHAPLEIGH: Thank you, Mr. Chair.

Toby, in your testimony I think you're
the only witness who to date has come forward to give us a number. And what you're saying is that approximately 162,901 registered voters in the 2008 election in Texas would have lacked a government-issued photo. And I think your testimony is, this is the minimum number and almost surely under-estimates that population. Give us the range.

What would be the outside number?

DR. MOORE: Well, the Carter-Baker study survey looked at Indiana, Mississippi and Maryland and found that the number of people without ID varied from I think 0.2 percent, or very little in Indiana, up to close to 4 percent, I believe, in Maryland. I will have to go back and look. So there was a range there of states. The average of all the people they surveyed, all 2,000 voters, was 1.2 percent, and that's percentage I apply.

However, because that number includes Indiana, which has a very high rate of ID ownership, there is reason to believe that the number would be higher than the 1.2 percent in Texas. But I would only have confidence in saying that as a minimum, that 162,901, based on the AU survey.

SEN. SHAPLEIGH: But you can't offer an opinion as to a number? When you look at the
demographic breakdown of Texas -- and here you're saying African-Americans are four times more likely than whites to lack a photo ID -- 88 percent of those without a photo ID had household incomes below $25,000 a year. In my own community, I think something like 73 percent of the population makes less than $35,000 a year by household.

So is there a formula, is there a way that you can look at the demographics of the 2003 census, extrapolate the 2008 and say this is your high number with respect to the number of folks that are going to lack a photo ID in Texas?

DR. MOORE: Well, it always scares me a little bit when I hear people use the word "extrapolate." I think I'll stick with my conservative low threshold, knowing that it's probably higher, could be considerably higher. But until somebody does the analysis, does the survey work, there is no way to know.

SEN. SHAPLEIGH: Okay. Now, you are the only witness that was part of the Carter-Baker Commission. From your testimony, I think you were the Project Director. Is that correct?

DR. MOORE: I was Project Manager after the release of the study. So I managed the follow-up
SEN. SHAPLEIGH: And you've also served for six years as the geographer of the Voting Section of the Civil Rights Division? In connection with that service, in connection with your professional expertise, do you have a number with respect to Hispanics? I notice that you've opined here as to African-Americans, how many lack a photo ID. We've talked about women; we've talked about folks making less than $25,000 a year. What is that number for Hispanics?

DR. MOORE: Hispanics are a very difficult group to survey, especially impoverished Hispanics who may not have landlines. They're hard to reach. There are language difficulties. I don't know of any kind of full-fledged scientifically credible survey that would allow you to get at that number, because from what we know of ID ownership and how it correlates with low incomes, we would expect that number to be considerably higher for Hispanics than for other groups.

On the other hand, Hispanic citizens may have higher levels of documentation, because they need to prove their citizenship where they have gone through the naturalization. There are a lot of

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variables in that. But we just don't know for
Hispanics how many people don't have an ID.

SEN. SHAPLEIGH: Are you familiar with
the Texas colonias?

DR. MOORE: Very little.

SEN. GALLEGOS: Thank you.

SEN. DUNCAN: Thank you, Dr. Moore.

There are no other witnesses or members
queued up, so you are excused.

The next witness is Dr. Frank
Strickland.

Dr. Strickland, you will approach, state
your name and who you represent. Turn your testimony
over to the -- written testimony, if any.

Do we have that?

I'll go ahead and introduce that as
Exhibit 23, would be the testimony of Frank B.
Strickland.

(Exhibit No. 23 marked and admitted)

SEN. DUNCAN: State your name, please,
and who you represent. You have 10 minutes.

TESTIMONY BY FRANK B. STRICKLAND

MR. STRICKLAND: Thank you,
Mr. Chairman. And, by the way, it's not
Dr. Strickland.
Sen. Duncan and members of the Senate,

my name is Frank Strickland. I'm a partner in the law
firm of Strickland Brockington Lewis in Atlanta,
Georgia, a firm which, together with its predecessors,
dates back to 1971. My experience with elections
comes primarily from two sources: Serving as a member
of the election board for the largest county in
Georgia and litigating various election and other
political cases over a period of many years.

Although I am not here in an official
capacity, I'm one of five members of the Fulton County
Board of Registration and Elections which is a
bipartisan board appointed by the Board of
Commissioners of Fulton County, which has general
supervision over all voter registration and election
processes in Georgia's largest county. I previously
served on the Election Board from 1971 to 1977.

Substantially all of the City of Atlanta is located in
Fulton County.

The Election Board is independent in
that it does not report to the Board of Commissioners,
and its decisions on registration and election matters
in Fulton County, including the appointment of the
department director, are final. Fulton County is
Georgia's largest county, with a population of
approximately 850,000. And there are approximately 552,000 registered voters in the county.

In 2005 Georgia first adopted a law requiring a form of photo identification when voting. A substantial number of persons over age 18 already had a Georgia driver's license, which is one of the acceptable forms of identification. The 2005 statute provided for issuance of a state voter ID for a nominal fee to persons who did not have a driver's license or other acceptable form of photo ID, such as a government employment ID card, voter ID card, United States military ID card, tribal ID card or a United States passport.

As a result of federal court litigation before United States District Judge Harold Murphy in Rome, Georgia, the law was changed in 2006 to provide for the issuance of a free photo ID card at any registrar's office in one of Georgia's 159 counties. Notwithstanding the availability of a free photo ID to anyone who did not have another acceptable form of identification, the 2006 statute was also litigated before Judge Murphy in a case entitled Common Cause vs. Billups which is found at 504 F.Supp. 1333. Judge Murphy was a Carter appointee to the federal bench, and he recognized the state's
interest in passing a photo identification law to prevent fraud when he said -- and I quote --
"Additionally, Plaintiffs have failed to demonstrate that the Photo ID requirement is not reasonably related to the state's interest in preventing fraud in voting."

Other plaintiffs filed suit in state courts to challenge the photo ID statute under state law. These efforts were also unsuccessful after appeal to the Supreme Court of Georgia.

In addition to arguing that in-person voter fraud does not occur and remedies like voter identification laws are unnecessary, opponents of photo identification requirements have long argued -- quite vocally and emphatically -- that these laws would lead to disenfranchisement of, in Georgia's case, hundreds of thousands of voters. But when the State of Georgia finally had its day in court, it became clear that emotional and hyperbolic arguments used to argue against the state's photo identification law were simply empty rhetoric.

Judge Murphy also addressed this argument in his decision for the state -- and I quote -- "As the Rekita court noted, voters who lack Photo ID undoubtedly exist somewhere, but the fact
that Plaintiffs, in spite of their efforts, have failed to uncover anyone 'who can attest to the fact that he/she will be prevented from voting' provides significant support for a conclusion that the Photo ID requirement does not unduly burden the right to vote."

Judge Murphy further stated, quote, "Plaintiffs have failed to produce any evidence of any individual ... who would undergo any appreciable hardship to obtain photo identification in order to be qualified to vote."

The plaintiffs' inability to produce a single voter who would be adversely impacted by the law was important to Judge Murphy's determination that there was no significant burden posed by the photo ID law and should also be a very important consideration for the Texas Senate.

Of the two individual plaintiffs named in the Common Cause case, one individual testified that she didn't mind getting a photo identification and she didn't think it would be hard to get one. The other Plaintiff said that he thought he could get a photo ID and it would probably help him a lot. Interestingly, the same lawyers who argued that Plaintiff simply could not find a way to travel seven miles to his registrar's office to get a photo ID also
drove that Plaintiff nearly 200 miles to testify at trial, traveling past many locations where he could have obtained a free photo ID on the way to the trial.

Likewise, the other witnesses relied upon by the lawyers for the Plaintiff to establish that obtaining a photo ID was too burdensome ultimately agreed that, in fact, they were perfectly capable of obtaining the ID. One woman who signed an affidavit prepared by the Plaintiff's counsel asserting that it was too far to go to the county courthouse to get a photo ID from the registrar, freely admitted on her deposition that she regularly traveled to the courthouse and could pick up an ID the next time she was there.

Another witness who also gave an affidavit that he would have a hard time obtaining a photo ID testified differently on deposition. When asked if he thought he could get a ride to the registrar's office to get a photo ID, he replied that he didn't need a ride and he could get one any time, because the registrar's office was within walking distance of his home.

Judge Murphy's decision in the Common Cause case, which is found at 554 F.3d 1340 -- I beg your pardon. This is the Court of Appeals decision --
it was upheld on January 14, 2009, in a unanimous opinion of a three-judge panel of the United States Court of Appeals for the 11th circuit. The Court stated -- and I quote -- "We conclude, based on the [evidence] in Crawford v. Marion County Election Board . . . which upheld a similar law in Indiana, that the burden imposed by the requirement of photo identification is outweighed by the interest of Georgia in safeguarding their right to vote."

The Plaintiffs have filed a petition for certiorari. But because the Crawford case is really on all fours with Georgia's case -- except Georgia's law was deemed less strict by Justice Kennedy -- a grant of that petition application for cert is unlikely.

After Judge Murphy's September 2007 decision upholding the photo ID law, Georgia held numerous elections during 2007 and 2008. In November 2007, more than 100 Georgia counties and municipalities held elections with the photo identification law in place. Every one of these elections occurred without incident or legal challenge related to the photo ID requirement. In July 2008, partisan primaries were held with a large turnout; and again, no problems related to photo ID.
Most importantly, in the 2008 General
Election, with the highest turnout ever seen in
Georgia -- more than 3.9 million voters -- the photo
ID law posed no problem. That fact is particularly
important because of the 3.9 million votes cast, 92
percent were cast in person, meaning that the voter
had to show a proper form of photo ID. Again, no
problems. Although the turnout was much lighter for
the December 2nd runoff, the fact remained constant
that the photo ID requirement did not result in any
disenfranchisement statewide.

From the perspective of an elections
administration official in Fulton County, I can also
say without hesitation that countywide, the photo ID
requirement did not result in the mass
disenfranchisement its opponent predicted. The
requirement did not result in any disenfranchisement
at all.

Focusing on the general election in
November 2008, the voter turnout war 405,000 out of
552,000 registered voters, which is a turnout of
approximately 73 percent, a record for Fulton County,
both in terms of the number of registered voters and
voter turnout. Only 93 voters did not have an
acceptable form of photo ID. Each voter was given a
provisional ballot and, in accordance with the
statute, was instructed to present a valid photo ID
within 48 hours. While only one did so, there is no
way to know why the others did not.

SEN. DUNCAN: Mr. Strickland, your time
has expired.

MR. STRICKLAND: All right, sir.

SEN. DUNCAN: We have Sen. Watson.

QUESTION FROM SENATE FLOOR

SEN. WATSON: Welcome to Texas.

MR. STRICKLAND: Thank you, sir.

SEN. WATSON: I appreciate your being
here. I just have one thing I want to ask you about.
You didn't bring any information or statistics or
anything at all related to Texas and the impact that
this proposed bill would have on African-Americans or
Hispanics or people that don't speak English, anything
like that, did you?

MR. STRICKLAND: Nothing having to do
with Texas, no, sir.

SEN. WATSON: Thank you very much for
being here.

SEN. DUNCAN: Sen. Williams.

SEN. WILLIAMS: Thank you.

Mr. Chairman.
Mr. Strickland, you have -- I don't know if you got to it in your remarks, because the time expired, but I did read your written testimony. And you make three points at the end of your report, and one is that you talk about how important an educational program is when any photo ID law is put into place.

And I just wanted to share with you some of the things that we're doing in Texas through the Secretary of State's office that have to do with voter education and the kinds of things that we could easily incorporate any change in the election law into these sorts of things and see if this was the soar of thing you were referring to.

In television and radio ads, we have three different 60-second spots in English. "High Tech", "Special Needs" and "New Voter" are the titles of those. I'm not going to play them for the committee, but they're available on the Secretary of State's website in Spanish. We also have three 60-second radio spots: A father-daughter, a special needs voting radio spot and a man on the street.

In addition, we have one, two, three, four, five -- six English version television spots and four Spanish version 15-second spots: "Learn How to
Vote," "Special Needs Voters," "Voting Machines,"
"Register By," the Secretary of State saying, "You can
vote," "Learn How to Vote," "Vote in Spanish" and
"Register By" and then the "You Can Vote," also those
last four in Spanish so that we have the same ad
sometimes in English and Spanish.

And then we also have on that same
website, you know, a number of links -- Voter Facts.
Where Do I Vote? What's my District? How Do I Vote
Early? -- that sort of thing that is on the Secretary
of State's website. Are those just generally --
without getting too specific, because our states are
different -- generally speaking, are those the kinds
of voter education projects that you ran in your
state?

MR. STRICKLAND: Yes. And I would say
that the program you just outlined goes considerably
beyond what was done in Georgia.

SEN. WILLIAMS: Is that right? Now, one
other thing that you mentioned in your remarks that I
wanted to follow up on -- give me just a second. It's
also near the end of your remarks.

And beginning on Page 6, at the very
last line, you say, "While critics of the photo ID law
contend that it will be administered in a racially
discriminatory fashion, there is absolutely no support
for that allegation, just as there is no support for
the notion that requiring a photo ID is
unconstitutionally burdensome."

Are you familiar with the Crawford vs
Marion County Supreme Court case?

MR. STRICKLAND: Yes, generally
speaking.

SEN. WILLIAMS: Okay. And I believe --
well, I know. I've got a copy of the case here. And
then the Supreme Court said about this very issue, "A
photo identification requirement imposes some burdens
on voters that other methods of identification do not
share. For example, a voter may lose his photo
identification, may have his wallet stolen on the way
to the polls, or may not resemble the photo in the
identification because he [has] recently [grown] a
beard," all things that we've heard these sorts of
problems on the floor today.

But the Supreme Court concluded, as you
did in your remarks, that "Burdens of that sort
arising from life's vagaries, however, are neither so
serious nor so frequent as to raise any question about
the constitutionality . . .; the availability of the
right to cast a provisional ballot provides an
adequate remedy for problems of that character."

And I believe you say in your remarks that you have that same kind of provisional voting in the Georgia law. Would you describe for the committee briefly what that entails.

MR. STRICKLAND: Yes, sir. It's a 48-hour requirement. In other words, if the voter, using one of the hypotheticals that you presented, has a difficulty that you outlined, then that person is instructed by the poll worker to return to a registrar's office within 48 hours to validate his or her identification.

SEN. WILLIAMS: And Fulton County is the most populous county in the State of Georgia. And how many people have you had come back to -- that have been challenged -- first of all, how many people have been challenged on that? And then I'm curious how many have actually come back.

MR. STRICKLAND: Out of the statistics I presented a moment ago, with well over 400,000 voters, there were 93 people who did not have a photo ID. Each was instructed to present a photo ID within 48 hours. Only one did.

SEN. WILLIAMS: Okay.

MR. STRICKLAND: As a follow-up to that,
each person who did not appear was sent a letter reminding that voter of the process and of the photo ID requirement.

SEN. WILLIAMS: Now, our provisional voting that we have here in Texas does not require the voter to come back so that their vote may be counted. Wouldn't you think that would be even less burdensome than what you have in Georgia?

MR. STRICKLAND: No question.

SEN. WILLIAMS: And then we also, under the provisions of this bill, allow alternative forms of identification that would include government documents and official papers -- I don't want to go through the whole list, because it's so late -- but one photo ID or two of any of the following, a laundry list, do you think that also would relieve the burden from some of those folks that might not have a photo ID? Would it make it less burdensome?

MR. STRICKLAND: Less burdensome. It is less stringent than the Georgia law or the Indiana law.

SEN. WILLIAMS: Okay. Thank you so much. I appreciate you being here with us tonight.

MR. STRICKLAND: Thank you, sir. By the way, the president pro tem of the Georgia Senate is
Tommy Williams.

SEN. WILLIAMS: Yes. I run into him all the time at conferences and see his name on the Internet. We spell our first name differently, though.

MR. STRICKLAND: I noticed that.

SEN. WILLIAMS: He's an "ie," and I'm a "y."

SEN. WHITMIRE: Mr. President, Chairman?


SEN. WHITMIRE: Mr. Strickland, on Page 6 --

SEN. DUNCAN: Well, hold a minute. I think you're out of order. I'm sorry, Senator. You're not -- I thought you had an inquiry.

SEN. WHITMIRE: Oh, no. I'm sorry.

SEN. DUNCAN: Sen. Ogden is next in line. I'm sorry.

SEN. OGDEN: I yield to Sen. Whitmire.

SEN. DUNCAN: Senator Whitmire.

SEN. WHITMIRE: The education component you emphasize is so important, and on Page 6 you give great credit to the Georgia Secretary of State, her staff and the members of the State Election Board.
Could you tell us what the entity, the State Election Board, consists of, how they're chosen and what are their responsibilities?

MR. STRICKLAND: The State Election Board is appointed by the Governor, and the Secretary of State is the Chairman of that board. And in general, they do not run the elections as such. They're more of a review body for problems in connection with the election.

The elections are run, as I'm sure is the case in -- as far as I know is the case in Texas, by the county election boards --

SEN. WHITMIRE: You also mentioned your county election officials. Would it impact your judgment, what you're here speaking and recommending for Texas, to know that we do not have such an entity, we do not have a state election board, which you said played a vital role in the education of your voters?

MR. STRICKLAND: I think the role of the Secretary of State was considerably more important than the State Election Board. I just included them in the list of persons who were involved. But our Secretary of State, Karen Handel, really stepped out and took a leadership role. And I would say the State Election Board --
SEN. WHITMIRE: Do you have an approximate --

MR. STRICKLAND: -- incidental.

SEN. WHITMIRE: Do you have an approximate what your budget was to carry out this educational process that you speak of?

MR. STRICKLAND: The number that I recall -- and I was not directly involved in that -- is around $600,000. Now, the director of our Elections Division is a witness that will testify later here and give you the number.

SEN. WHITMIRE: Of course, you obviously realize Texas would be much larger and it would be logical to assume it would be probably several times that cost?

MR. STRICKLAND: I would assume that to be the case.

SEN. WHITMIRE: And my colleague was referencing that we have spots prepared. I was anxious to ask him -- you know, it's great that we have the spots. But, obviously, we have to have the budget and the implementation to make that redundant enough. Like any other campaign, the voters are going to have to hear that numerous times. I do not believe, looking at our Secretary of State's budget,
that that is accounted for.

SEN. WILLIAMS: I'll put it in.

SEN. WHITMIRE: Beg your pardon?

SEN. WILLIAMS: I'll put it in.

SEN. WHITMIRE: You will put it in the budget? Well, I'm sure we will have a chance to discuss that. In fact, I'm going to yield to our Chairman of Finance.

I appreciate you being here and I know you mean well. I just pause because I think Georgia is a fine state. And we're just so much more diverse, larger and in some instances maybe more complicated than you. So I look forward to my colleagues telling me what we're going to do with all of those spots. If they remain in the can and do not have the proper budget, I don't think they will ever be nearly as successful as you speak of in Georgia.

SEN. DUNCAN: Sen. Ogden.

SEN. OGDEN: Mr. Strickland, thank you.

Sen. Williams alluded to this, and I want to go back to a question that Sen. Watson asked a minute ago. And I may ask -- if I get the question incorrect, I would ask Sen. Watson to correct me. But I think he asked if, in your testimony, you said anything about the potential for ethnic discrimination
in Texas, I think was his question.

Is that right?

MR. STRICKLAND: That's pretty close.

SEN. OGDEN: And your answer was "No"?

MR. STRICKLAND: Correct.

SEN. OGDEN: But I would at least like to say -- and I would like you to comment on this -- is that in your written testimony you basically address that issue from a Georgia perspective. And on Page 6, you say that, "From time to time, the argument has been made that no matter how much election officials and poll workers are educated on the topic, the requirement will be administered in a racially discriminatory fashion. That argument is a red herring," and I would like you to amplify that, please.

MR. STRICKLAND: Well, the example I gave in my testimony -- and I may have run out of time before I got to it -- was the election Board with which I'm involved in Fulton County, which is a racially diverse county. And, as I said, we have a bipartisan board and our board appoints the director of the department.

And for a number of years, that person has been an African-American woman, and that's the
case today. And what I said was that approximately
95 percent of the full-time Election Department staff
is African-American. And also that during our primary
general elections, the demographics of the poll
workers is in excess of 50 percent African-American.
So I took the position that it simply does not make
sense that that group of people is going to
discriminate against minority voters.

SEN. OGDEN: Okay. Thank you.
SEN. DUNCAN: Sen. Ellis.
SEN. ELLIS: Thank you, Mr. Strickland;
thank you for being here.
Briefly, you mentioned some 89 or 75
provisional ballots, I think. I can't remember the
number.

MR. STRICKLAND: 93.
SEN. ELLIS: 93 that were --
MR. STRICKLAND: What I said was, there
were 93 persons out of over 400,000 in Fulton County
that did not have an acceptable form of photo ID.
SEN. ELLIS: And you said under your
statute in Georgia, they have 48 hours --
MR. STRICKLAND: Correct.
SEN. ELLIS: -- to bring something to
prove they are that person, only one person came in?
MR. STRICKLAND: Right.

SEN. ELLIS: Okay. Now, in your statute it lays out the process, unlike -- although I know you have not read it -- the Texas statute is quiet on that, the bill that he has here. Now, out of the ones that didn't come in, does anyone go do an analysis if part of the rational behind the statute in Georgia is to deal with the issue of voter fraud, did anybody go and check, someone go and check and see what was up with the ones who did not come back and prove they were who they said they were when they voted?

MR. STRICKLAND: Not to my knowledge. As I mentioned a moment ago, a follow-up letter was sent to the people; that is, the 92 that did not return.

SEN. ELLIS: Yes. And only 92 out of 400,000 in Fulton County voting may not seem like a lot, but -- my mother-in-law lives in Atlanta -- if there is a close legislative race or Senate race or city council race, as we had here. We had one election for a House seat -- they have been enlarging House seats in Georgia, about 150,000 people per House seat -- it could determine whether or not someone won. Does anybody do an analysis to see the ethnic or racial makeup of those folks who did the provisional
ballot but didn't show up to prove they were who they said they were?

MR. STRICKLAND: I don't know the answer to that, Senator. I'm sorry.

SEN. OGDEN: Okay. Thank you for coming.

MR. STRICKLAND: Thank you, sir.

SEN. DUNCAN: Sen. Hinojosa.

SEN. HINOJOSA: Thank you, Mr. Chairman.

Mr. Strickland, I think Sen. Williams was asking you a question concerning the educational programs by your Secretary of State, and you mentioned that they were using websites. And you said you really didn't know the cost of a training program, so educational programs. Do you know they provided computers for people who could not afford computers?

MR. STRICKLAND: I don't.

SEN. HINOJOSA: Also I guess in the State of Georgia, do you have poll watchers?

MR. STRICKLAND: Poll watchers?

SEN. HINOJOSA: Yes, who they show the voter ID to?

MR. STRICKLAND: Oh, they show that to -- when you walk in the polling place, you sign a voter certificate, indicating your name, your address,
and you say you're eligible to vote in that election.

That begins the voting process.

And in my own polling place, at that
particular step I'm asked to produce a photo ID. And
that really carries over to the -- we have a device
called an express poll. It's a little touch screen
device that verifies that -- in other words, if I
present my voter certificate with my name on it, then
the poll worker who has seen my photo ID then punches
my name or the first two or three letters of my name
into the express poll machine, which is really the
database of registered voters, and confirms the fact
that I am a properly qualified voter to vote at that
precinct. So I'm showing the identification to the
poll worker, as distinguished from a poll watcher who
in Georgia would be a volunteer for each political
party who is observing the election but is not, in
fact, a poll official.

SEN. HINOJOSA: So I guess, are you
using a driver's license or some type of photo ID --

MR. STRICKLAND: Yes.

SEN. HINOJOSA: -- that has some type of
information on the back that can be scanned?

MR. STRICKLAND: Unfortunately, we do
not have the ability to scan. That would considerably
increase the speed of processing. In other words, we're using this thing that I describe as an express poll. If we had the bar code on the back, it would be a matter of zipping it through that device and verifying it that way. It would be much faster than the manual punching.

SEN. HINOJOSA: And do you know what the cost would be of that express poll that you're using in Georgia?

MR. STRICKLAND: The express poll device? I don't know. We spent a lot of money to go to the touch screen voting, and the express poll machines were acquired at about the same time, at considerable cost. And I do not recall the cost.

SEN. HINOJOSA: And do you have those express polls in each precinct?

MR. STRICKLAND: Yes, several of them, depending on the number of registered voters at that precinct.

SEN. HINOJOSA: And you said the cost was considerable. Do you know how much, a ballpark figure?

MR. STRICKLAND: I cannot give you a ballpark. I'm sorry.

SEN. HINOJOSA: So for us who want to do
the same thing, even though it slows down the process, would have to invest quite a bit of money in providing the funds to the precincts in our state?

MR. STRICKLAND: Well, I think in every polling place, there has to be some verification of the voter being on the registered voters list for that particular precinct. So this is a form of verification. It happens to be computer-driven. But as far as I know, in every polling place in every state, there has to be verification that the voter is, in fact, on the registered voters list.

SEN. HINOJOSA: Yes. And one of the questions that I asked the author of this legislation here is that we don't have a way to verify whether or not the photo ID is fake or a bad one, because here in Texas, you can go buy a fake photo ID at a flea market.

MR. STRICKLAND: I'm not a computer expert, but I would think the problem with a fake photo ID would be the bar code.

SEN. HINOJOSA: And you're right, you're exactly right, the bar code. But the problem is that we're not using the type of equipment that you're using in Georgia to verify whether or not that's a valid ID. So that's a problem that we have in the
present legislation, the way it's drafted.

MR. STRICKLAND: Yes. I think verification is an important part of the process. And I will take your word for it on how it's done in Texas.

SEN. HINOJOSA: Thank you.

SEN. DUNCAN: Sen. Watson.

SEN. WATSON: Yes. Thank you, Mr. Chairman.

I'm sorry. I thought I was done. But since Chairman Ogden asked a question and called out something related to what I had asked you, I thought I need to follow up.

He pointed to a part of your testimony on Page 6 where he specifically quoted language regarding where you said that the requirement will be administered in a -- it talks about the requirement being administered in a racially discriminatory fashion. And, of course, you go on to say that that is a red herring and, frankly, nonsense, to use your words.

So in that area, in answer to Chairman Ogden's questions, you were talking about the administration of it being done in a racially discriminatory fashion. Is that correct?
MR. STRICKLAND: What I meant to say, the way the sentence is constructed, it really means in a non-discriminatory fashion.

SEN. WATSON: Gottcha! But in any event, it's talking about how it's administered. Right?

MR. STRICKLAND: Yes.

SEN. WATSON: And, of course, you -- and maybe you don't know. But are you aware that under Section 5 of the federal Voting Rights Act, it isn't just about whether it's administered in a discriminatory fashion, it's whether or not it has the purpose or effect. Are you familiar with that?

MR. STRICKLAND: I am familiar with that.

SEN. WATSON: And when I ask you about Texas and your familiarity with Texas, you wouldn't know, for example, whether in Texas, in other things, other issues related to voting, you wouldn't know whether Texas has some history of folks removing the names of eligible voters from the list of registered voters where the poll list of precincts, in a way where they would then not be allowed to vote, do you?

MR. STRICKLAND: I have no knowledge of that.
SEN. WATSON: You don't have any knowledge about poll workers refusing to accept people for voting, even though their acceptance might be required?

MR. STRICKLAND: No knowledge of that.

SEN. WATSON: About whether people have provided false information to voters about voting procedures resulting in people failing to then go ahead and vote?

MR. STRICKLAND: I'm not familiar with that.

SEN. WATSON: Or anything like providing false information about where a voting place is or what day people might vote?

MR. STRICKLAND: I have not made a study of Texas voting procedures.

SEN. WATSON: Okay. Now, although you indicate that you don't believe that in Georgia the requirement has been administered in a racially discriminatory fashion, at least in your area of Georgia, you are familiar with studies such as that put out by the Brennan Center where it indicated that in Georgia in 2007, in some local elections, some limited turnout elections, there were voters' ballots rejected because of the voter ID law, weren't you?
MR. STRICKLAND: I'm not familiar with the Brennan Center study, though.

SEN. WATSON: Okay. So you wouldn't know whether, in that Brennan Center study, it also pointed out in the 2008 presidential primary that number of people that were -- ballots that were rejected because of Georgia's voter ID law grew into the hundreds, and you just wouldn't have any way of knowing anything about that?

MR. STRICKLAND: As I said a moment ago, I'm not familiar with the Brennan Center study.

SEN. WATSON: Okay. Fair enough. Since we were talking about Texas a minute ago -- and I want to be clear on what it was that I was asking questions about that Sen. Ogden decided that he needed to ask about, too. Let me ask this more specifically.

You're not here tonight able to provide the folks that are going to vote on whether to implement SB 362, which would put new requirements on people in Texas trying to vote, you're not here providing us with any sort of statistical analysis of the effect -- administration or not, but of the effect of that new requirement on African-Americans, Hispanics, people making less than $35,000 a year, people who speak only Spanish or Vietnamese or senior
citizens, anybody like that, are you?

MR. STRICKLAND: I can't comment on how things would work in Texas. What I did try to say in my testimony and otherwise is that a number of similar arguments were made in Georgia, and we just simply have not had that experience.

SEN. WATSON: And one of the differences, of course, in Georgia versus Texas is, Georgia's Hispanic population is what, about 7 percent?

MR. STRICKLAND: That sounds about right.

SEN. WATSON: Do you know anything about colonias in Texas?

MR. STRICKLAND: I do not.

SEN. WATSON: How many media markets are there in Georgia?

MR. STRICKLAND: Well, there's one gigantic market in the Atlanta area, and the others I would consider submarkets. Perhaps a half dozen.

SEN. WATSON: All right. Do you know whether that's different than in Texas?

MR. STRICKLAND: Well, I know Texas has some much larger cities than our other cities in Georgia besides Atlanta. I don't know the exact
number of media markets, though.

SEN. WATSON: Well, I'll let you know
that it's quite a bit more media markets, and so it
might also make a big difference with regard to that
education requirement you talked about.

Appreciate your being here tonight.

Thank you very much.

MR. STRICKLAND: Thanks so much.

SEN. DUNCAN: The Chair recognizes
Sen. Uresti.

SEN. URESTI: Mr. Strickland, good
evening and welcome to Texas.

MR. STRICKLAND: Thank you, sir.

SEN. URESTI: Thank you for being here.

I know you've come a long way, and we do appreciate
your testimony.

Mr. Strickland, I just have a few
questions for you with regard to some of the comments
you mentioned earlier that I read in your written
testimony, specifically with regard to a couple of, I
believe, plaintiffs that you referenced. There were
two in particular that I think you indicated could
have obtained their photo ID. One was within seven
miles and I think was one within walking distance. Is
that correct, Mr. Strickland?
MR. STRICKLAND: That's correct.

SEN. URESTI: And what I'm trying to do is draw the distinction and to kind of follow on what Dean Whitmire mentioned earlier, draw a distinction between the different -- State of Georgia, which I know is a beautiful state, and Texas, specifically with regard to the geographical area that is included in both the states.

Would you agree with me that distance could become a barrier with regard to obtaining an individual's photo ID?

MR. STRICKLAND: I suppose it's possible. As I pointed out in my testimony, we don't have as many counties as you do, but we are the second largest in number of counties, with 159. So we have 159 locations where a free photo ID can be obtained if people don't already have some form of photo ID.

SEN. URESTI: Well, and I think the biggest distinction would be, though, even though you have 159 counties and we have 254 counties, is the fact that Georgia, although I believe is a large state, compared to Texas is a much smaller state, I looked up Fulton County, which I understand is Georgia's largest county, and the square mileage for Georgia (sic) County is 520 miles. Is that correct?
MR. STRICKLAND: I'm sorry. I didn't understand that question.

SEN. URESTI: The size of Georgia -- I beg your pardon -- of Fulton County is 529 square miles. Is that true?

MR. STRICKLAND: Yes, I believe that's correct.

SEN. URESTI: And, in fact, the size of Georgia, the State of Georgia, is 59,424 square miles. Is that correct?

MR. STRICKLAND: Yes. It's the largest state east of the Mississippi River.

SEN. URESTI: And the reason I point that out -- and I don't know if you heard my testimony earlier when I was talking to Sen. Fraser. And, in fact, as a backdrop to my questions was the size of my senatorial district, which is almost the size of the State of Georgia. The size of my senatorial district graphically is 55,000 square miles, and the size of the State of Georgia is 59,424 miles. So you can almost fit the State of Georgia into my senatorial district.

And so I throw that out to again ask the question: Do you believe, now knowing the size of just my district and, of course, the size of Texas,
would that be a challenge and, therefore, a barrier to
somebody obtaining a photo ID?

MR. STRICKLAND: I suppose it could be.

But it seems to me that most people at sometime or
other go to the population center where, at least in
Georgia, a free photo ID could be issued.

And as I think another witness
testified, in Georgia, the statistics were that there
were six and a half million driver's licenses in place
versus about 4,500,000 registered voters. So I think
that demonstrates that a substantial majority of
registered voters already had a form of photo ID; in
other words, this was not a new requirement, that
every voter in Georgia go out and obtain an entirely
different kind of photo ID. It didn't demonstrate
that 100 percent of registered voters had a photo ID,
just that in my view a substantial majority already
did.

SEN. URESTI: And I understand that,
Mr. Strickland, though your DPS offices, I assume, are
open Monday through Friday, 8:00 to 5:00?

MR. STRICKLAND: Well, we're not using
DPS offices; we're using the county voter registrar,
which keep normal business hours.

SEN. URESTI: Okay.
MR. STRICKLAND: And most likely they're in the county courthouse of the county.

SEN. URESTI: Would it concern you, though, if, in my district at least, some of the counties, they have their DPS offices only open one day a month? Do you think that would be a barrier for somebody obviously trying to obtain their photo ID?

MR. STRICKLAND: Well, it certainly could be.

SEN. URESTI: Mr. Strickland, I appreciate it, and thank you very much. And welcome to Texas.

MR. STRICKLAND: Thank you, Senator.

SEN. DUNCAN: Thank you, Mr. Strickland. There are no other members queued up to speak, so you will be excused. Appreciate your testimony.

MR. STRICKLAND: Thank you, sir.

SEN. DUNCAN: The Chair calls Mr. Adam Skaggs.

MR. SKAGGS: Thank you, Mr. Chairman. Thank you, Senators, for giving me the opportunity to speak with you today.

SEN. DUNCAN: Mr. Skaggs, if you would, let me do a little housekeeping. I think we have Exhibit 24, which is your written testimony. Is that
correct?

MR. SKAGGS: Yes, sir.

SEN. DUNCAN: Okay. We'll go ahead and put that in the record.

(Exhibit No. 24 marked and admitted)

SEN. DUNCAN: And then if you will state your name and who you represent. You have 10 minutes.

TESTIMONY BY ADAM SKAGGS

MR. SKAGGS: Certainly. Thank you, Mr. Chairman.

My name is Adam Skaggs. I am counsel at the Brennan Center for Justice at NYU School of Law in New York City. Brennan Center is a non-profit, non-partisan public policy and legal advocacy organization, and we focus on fundamental issues of justice and democracy. Among other things, we promote policies that ensure fair and accurate elections and that maximize citizen participation in the electoral process. Our work toward these goals has included extensive research and the publication of studies and reports, assistance to state and federal policymakers and advice on electoral legislation and, when it's become necessary, participation in litigation to protect the fundamental right to vote.

As part of this work, we have paid...
particular attention to the debate over strict voter identification policies. We've commissioned research on the number of citizens who lack documentary proof of identity, and we have participated as an amicus in litigation over strict voter ID policies in Indiana, Georgia, Arizona and Albuquerque, New Mexico.

A central part of these efforts has been our research on allegations of voter fraud. We've analyzed claims of rampant voter fraud in order to distinguish unfounded and exaggerated tales of fraud from reliable, verified claims of election misconduct.

We published the results of this analysis in a monograph entitled "The Truth About Voter Fraud," which compiles methodological flaws that have led to allegations of voter fraud and debunks baseless -- though often repeated -- reports of voter fraud. In my testimony today, I want to share some of our findings.

Our findings illustrate the SB 362 makes little sense as a matter of policy, for three reasons. First, SB 362 does not fix any notable problem that Texans have experienced. Second, to bolster their case, supporters of SB 362 cite a number of problems that the bill would not correct and would not address, and that misleads the public into thinking that the
The last and perhaps the most important reason that SB 362 is likely to create problems, the problems it creates are going to be far worse than the single problem that it even has the potential to cure. Some of my colleagues have already discussed that third issue. I'll focus my testimony on the first two.

Because we have found virtually no fraud of the type that a voter identification requirement could fix, the Brennan Center is frequently charged with denying the existence of voter fraud. This is inaccurate, and I want to state that this evening with absolute clarity. Unfortunately, some forms of election fraud and misconduct do occur with some frequency. Last year, for example, as in the past, there were repeated instances of voter misinformation and intimidation, such as when voters were told erroneously that they would be arrested if they tried to vote and had any unpaid parking tickets, or when voters were given misinformation about where they could vote, where their precincts were, the hours they were open.

We've seen repeated instances in which
election officials, without justification, have denied registration to individuals who are eligible to register and vote. In the last year, for instance, we saw this problem with college students in a number of different communities. Occasionally we've seen individuals offer to sell their votes, and we've seen individuals vote in jurisdictions in which they do not reside.

And there have also been confirmed examples of fraud and misconduct involving absentee ballots. Some of this fraud has involved coercion or bribing of absentee voters. Some of these instances have involved schemes to submit multiple fraudulent absentee ballots. All these acts should be and must be condemned. When it exists, election fraud and any kind of electoral misconduct should be investigated and it should be published, and it often is.

Finally, I want to just observe that there are some examples of mistakes made by individuals who register to vote when they're not eligible but without realizing that they're ineligible. We saw examples in Arizona, for example, where individuals who were applying to become citizens and who had received letters from the immigration authorities congratulating them and telling them that
their application for citizenship had been approved, registered to vote but before they had actually formally taken the oath of citizenship.

And we saw an example in Wisconsin where somebody showed up to vote, presented his prisoner identification card that had the word "OFFENDER" stamped in bold face across the face of it, and that individual was actually allowed to vote.

Now, that's unfortunate. Obviously, that individual shouldn't have been able to vote, and those folks who hadn't completed the application for citizenship should not have been registered. But these are examples of error; they're not examples of anyone trying to misrepresent their status or trying to intentionally commit fraud. These folks shouldn't be allowed to register to vote. But publicizing the eligibility requirements and training poll workers is a far more effective answer to those issues, those human errors, than it is to require every single eligible citizen in the state to present documentary proof of identification of the sort that's proposed here.

As to allegations of other types of voter fraud, including many of the ones we've heard discussion about today, our research has indicated
that these claims proved baseless in all but the most
limited exceptions. Except in the rarest of cases,
these involve crying wolf. This is true of the most
frequently reported forms of punitive voter fraud --
double voting, voting in the names of dead people and,
most importantly, for the purposes of this hearing,
impersonation of registered voters at the polls.

Our exhaustive research reveals that
there is little to no credible evidence of
impersonation fraud in Texas or anywhere else in the
country, and that's the only form of misconduct that
this proposal would address. This is worth repeating:
The only problem that a voter ID requirement like SB
362 could possibly fix doesn't exist. Texans are
struck and killed by lightning more often than
impersonation fraud occurs, and there are far, far
more reports of UFOs every year than there are
instances of impersonation at the polls.

There are a number of reasons why
reports of fraud, impersonation fraud at the polling
place occur, but that they crumble when they're
subjected to scrutiny. First, a number of these
claims are based on attempts at data matching. We've
heard a bit about this today. This is when you
attempt to use computerized matching of data from the
voter rolls against some other source of data; for example, death records. And because of problems with this data matching, the protocols that are used, it often results in false positives, false indications of somebody on the vote rolls who is also on one of these lists.

For example, if matching is conducted without controlling for a suffix like "Jr.," then John Smith, Jr., may be thought to be the same person as John Smith, Sr., who has died, and that will result in a false report of somebody casting a vote in the name of someone who is ineligible.

In Florida in 2000, we saw a matching protocol used that only required a match of 80 percent of the letters in the last name. So, for example, someone with the last name of Ellis would be matched with someone with the last name of Ellison. 20,000 voters, more than 20,000 voters were purged from the rolls in that instance, and many of them were frequently revealed to be inaccurate.

There are also a number of erroneous reports of impersonation fraud that result from clerical errors either on the part of poll workers or on the part of the voter, such that when somebody signs their name on the wrong line next to a voter
with a very similar name or when a poll worker at the end of the day scans the wrong bar code for a voter and ends up recording erroneously that somebody voted when they didn't.

Both of these sorts of problems turned up in the claims of impersonation fraud that were lobbed about before the 2008 election by the Texas Watchdog website. They had a big story with a dramatic headline -- "Dead Voters Cast Ballots in Dallas County" -- and they provided 48 specific votes that were questioned. Poll books and signature rosters were available for 47 of these. And after a very careful review, the Dallas Morning News concluded that none involved a fraudulently cast vote.

So there are numerous since-debunked reports of voter fraud, and these reveal that there are very few, little to no examples of any confirmed impersonation fraud. That's not for lack of trying. You've heard about the five-year investigation by the Department of Justice which failed to charge any individual with impersonation fraud.

Here in Texas, Attorney General Abbott spent two years and $1.4 million fighting voter fraud, didn't indict a single person for impersonation fraud. There are obvious reasons -- I just want to mention...
the obvious reasons why impersonation fraud occurs so rarely, if ever. The risk of getting caught for attempting this crime is particularly high. The penalties are very strict. And there's hardly any payout. Under federal law, anybody that attempts this is subject to imprisonment for five years, fine of $10,000. Under Texas law, that's 10 years in prison. And if you're not an American citizen, you'll be deported if you try and get away for this.

And bear in mind, the payoff for this is extremely limited -- one single vote. If you were really intent on defrauding the electoral system, would you not choose a crime that gave you more bang for the buck? Or would you risk 10 years in jail and a $10,000 fine to, as we heard earlier today, go over to your neighbor's house, steal their voter certification out of their mailbox and then attempt to cast a ballot in that person's name?

I think the answer to that is obvious, and I think that goes a long way in explaining why impersonation fraud rarely, if ever, occurs in spite of all the heated and ultimately misguided rhetoric that we hear on this issue.

I see that my time is up, so I will end there and would welcome any questions. Thank you.
SEN. AVERITT: Sen. Davis, for what purpose?

SEN. DAVIS: May I please ask questions of this witness? Thank you, Mr. President.

QUESTIONS FROM SENATE FLOOR

SEN. DAVIS: Mr. Skaggs, I have a few follow-up questions for you. And thank you for being here and for your testimony before this body today.

What did the Brennan Center's 2006 national survey show about the percentage of people who cannot prove citizenship or who lack government-issued photo ID?

MR. SKAGGS: Well, it concluded a number of things. First of all, the basic conclusion was as many as 11 percent of U.S. citizens. And according to census data at that time, that's more than 20 million individuals didn't possess government-issued photo identification. So that's the baseline, and that's consistent with research that a number of other studies have concluded.

But I think as much as that is an alarming figure and as much as a 10 or 11 percent figure would suggest, an unacceptably high number of Texans who lack the kind of government-issued documentary identification that will be required under
SB 362, as much as the gross figures are cause for alarm, the distinctions within that data are equally alarming.

For example, elderly citizens are much more likely to lack the kind of government-issued identification that would be required under this bill. 18 percent, our survey found, of American citizens above the age of 65 did not have government-issued photo ID. That's true of photo ID.

And we've also heard anecdotally this afternoon, or this evening, that many senior citizens living, for example, at assisted living facilities also lack a number of the non-photo forms of identification that this bill could contemplate. They may not have utility bills in their name. They may no longer have bank statements. Certainly pay stubs often they wouldn't have. So that's a concern for seniors.

Minority citizens, citizens of color are also disproportionately likely to lack these sorts of government-issued identification documents. Our survey found that 25 percent of African-American citizens lacked the sort of ID that we're talking about here.

And finally, the other issue of concern
which we've heard about today is that citizens with
low incomes are much, much more likely to lack the
sorts of ID that we're talking about. Our survey
found that citizens making less than $35,000 per year
are more than twice as likely to lack
government-issued identification as citizens making
more than that. And we've heard already today in
testimony from some of my colleagues about the huge
number of Texans who fall beneath that income level.

SEN. DAVIS: With that being said, how
is it that voter fraud is not a problem, if both the
U. S. Department of Justice and the Texas Attorney
General have launched widespread investigations and
prosecutions of voter fraud?

MR. SKAGGS: Well, I think it's
important to be careful about the term we use here.
And I think it goes a bit far to say that voter fraud
isn't a problem. I think -- certainly I've tried to
make clear in my testimony that there are numerous
types of fraud that are problematic, that do cause
real threats to the integrity of our electoral system.
And I would encourage this body to take up some
policies that might address those sorts of things:
Voter intimidation, misinformation, denial of the
right to register to citizens based on illegal
reasons.

I think the point I'm trying to make is that the form of fraud, the only form of fraud that's at issue here with a big little SB 362, the impersonation of a registered voter at the polls is not a problem. It simply doesn't occur with any frequency that would be sufficient to justify a bill like this that has the potential to disenfranchise many thousands of Texans.

So it's not fair really to say that voter fraud isn't a concern. It's simply important, I think, to speak in specific terms without generalizing and muddying the waters, because when you're talking about a bill like this that has the real potential to disenfranchise many, many eligible Texas citizens, it's got to be justified by something important. It's got to be justified by a real problem, and that just isn't the case here.

SEN. DAVIS: And in the State of Texas, with the Attorney General investigations, can you point to, given the result of those investigations, the failure to demonstrate a problem with voter impersonation?

MR. SKAGGS: Well, I think the results of that investigation that I referred to by Attorney
General Abbott, as well as the national investigations that the Department of Justice has sort of inspired and that U.S. attorneys across the country have focused their efforts on, I think the results of those speak for themselves.

They have in the end uncovered wrongdoing and misconduct surrounding elections. They have indicted folks for such things as vote-buying schemes, campaign finance irregularities, a number of different sorts of crimes of the sort that just aren't addressed by a voter identification law of the sort that we're talking about tonight.

So the fact that these huge substantial resources were put into these efforts, the amount of publicly, the amount of effort, and though they came up with certain problems that aren't at issue tonight, they couldn't come up with a single indictment for anybody who was actually guilty of impersonation fraud I think speaks for itself.

SEN. DAVIS: And in your opinion, does the Senate Bill 362 that's before us today address any of the issues of fraud that were uncovered by the Texas Attorney General in that lengthy investigation?

MR. SKAGGS: No.

SEN. DAVIS: Now, regarding the Indiana
case and the Supreme Court case, no party or amicus cited even one case of impersonation at the polls in Indiana, to the Supreme Court. Would it surprise you, Mr. Skaggs, to learn that more Indiana voters have been disenfranchised by the law in the last two years than the number of reported cases of impersonation at the polls cited to the Supreme Court or from anywhere in the country in the last two decades?

MR. SKAGGS: No, I don't think that's surprising. I think it's entirely consistent with the point I was making earlier, that for all the rhetoric, there's just not -- there's not any record of any impersonation fraud. You're absolutely right. During the briefing presented to the Supreme Court -- and there were briefs presented not only by the parties but by dozens and dozens of groups on both sides of the issue from all over the country, the Brennan Center being one of those -- not a single one of the briefs that were submitted had any confirmed evidence of impersonation fraud.

But one of the groups in Indiana, the Marion County Election Board, which was actually one of the parties to the case, presented a brief in which they represented to the Supreme Court that during the 2000 election, during some local elections in 2000, in
that one single county, in Indiana, Marion County,
32 voters cast ballots that were rejected, ballots
that didn't get counted because the voters had failed
to comply with the voter ID requirements.

And that's not unique to Indiana. If I
could expand on that, we heard a moment ago about some
of the numbers out of Georgia, the 33 voters that had
their votes thrown out because they lacked ID in 2007.
And we heard that that, in the 2008 primary, was up to
254 Georgians who, because they lacked a
government-issued ID of the sort that was required,
had their votes thrown out.

The gentleman who testified before me
said he was unfamiliar with those figures which were
published, among other places, in a Brennan Center
report. He may be more familiar -- if he's not
familiar with Brennan Center's report, he might be
more familiar with the Houston Chronicle which just
this morning undated those figures with figures from
the 2008 General Election. So we saw in the primary
last year 254. During the general election, that
number rose up to 700 Georgia voters, more than 700,
who had their votes go uncounted because they were
unable to comply with these ID requirements.

Now, we also heard that out of I believe
it was 93 voters who showed up at the polls did their
honest best to try and cast a ballot, were forced to
vote a provisional ballot and that only one of those
individuals came back after the fact to actually
present the identification that was required. So
that's 92 out of 93 that had their votes cast away. I
don't think that's good math, that that many -- I
don't know what that is -- 98 percent, 97 percent. I
don't know what 92 out of 93 is -- but that that many
voters who cast their provisional ballot would have
their votes cast out I think should not be cause for
comfort, it should be cause for alarm.

MR. DAVIS: I think you're probably very
well aware of the fact that those of us on this Senate
floor who are concerned about the impact of adopting a
bill like Senate Bill 362 is the risk of
disenfranchising honest citizens in the State of Texas
and taking away from them the very precious right to
vote.

Given the numbers that you provided a
moment ago in terms of those who have been turned away
who were legally able to vote and, yet, under the new
photo ID requirements were not allowed to vote, how do
those numbers compare, those disenfranchised numbers
compare to real-world evidence in those particular
states of voter impersonation that was documented to be happening at their polls?

MR. SKAGGS: Well, one side of the ledger, we've got -- in one case 33 in Fulton County, 92 in the State of Georgia last year -- over 700. That's on one side of the ledger. Those are just votes that were tossed out because of this requirement. On the other side we have zero. So the balancing act is pretty clear if you ask me.

Now, it may be true that 92 or 93 votes out of 400,000 is a pretty small percentage. I don't think any of us would argue that. I would argue that 92 people having their votes thrown out because they lacked some sort of government identification is completely unacceptable. But that said, it is true that in Georgia they did have an opportunity, even though none of them took advantage of it, to show up within a couple of days afterward and present some sort of identification. Maybe they didn't show up to do that because they weren't told clearly that they had to do it. Maybe they didn't do that because they didn't have the time or they didn't have the ability to get off work to make many extra trip. And maybe they just didn't have the documentary proof, so maybe that's the reason. We don't know. As we heard, there...
was no investigation done as to why those 92 people
were disenfranchised. We don't know. But at least in
Georgia, they had the opportunity to present that
identification and have their vote count, even if only
one of them did it.

It's interesting to me to hear just a
few minutes ago that Texas' provision for provisional
balloting is somehow less burdensome than what is the
policy in Georgia, because in Georgia at least these
voters are given the chance to make their vote count,
by coming in. Now again, it's difficult apparently
for them to do it. Most of them don't. At least they
have the opportunity.

This bill that is under consideration
tonight has no such provision. So a voter who doesn't
have the identification at the poll and is forced to
vote a provisional ballot under SB 362 has no
opportunity to show up and provide evidence to get
that vote counted. So it's hard for me, I guess, to
conceptualize how something would be less burdensome
that categorically gives you no chance of having that
provisional ballot get counted. To me that's not a
provisional ballot; that's a placebo ballot.

SEN. DAVIS: Very good point.

Also, Mr. Skaggs, voter ID advocates