cite studies that attempt to show voter ID laws do not suppress turnout, and they even try to claim that turnout increases in Indiana and Georgia were caused by the voter ID laws. What are your thoughts on that claim?

MR. SKAGGS: You know, again, I suppose it's a good rhetorical point for proponents of such policies, but I think it's a specious argument, and it just doesn't withstand any kind of scrutiny, statistically or otherwise. Any social science methodology would suggest that those studies are completely incredible.

Bear in mind that the main study we're talking about that the first witness here this evening discussed concluded that voter ID policies in Georgia and Indiana actually drove voter turnout up, that there was a casual relationship between adopting these strict ID policies and turnout going up. And it came to its conclusion by comparing Indiana with Illinois and Georgia with Mississippi.

When asked about the possible methodological flaws, Mr. von Spakovsky said, "We controlled for any impact that Barack Obama's presence on the ticket would have had in skewing this data, because then Sen. Obama was not only on the ticket --
on the ballot in Indiana and Georgia, but he was also
on the ballot in Illinois and Mississippi. And that's
ture insofar as it goes, but I don't think that goes
very far in explaining why we should give any
credibility to these studies.

What these studies didn't take account
of at all is the status of these states, the swing
states, the status of these as hotly contested
elections. There was no controlling for the amount of
advertising that was run in Indiana versus Illinois.
There was no taking account for number of candidate
appearances in Indiana versus Illinois of Georgia
versus Mississippi, the number of ads run by the
campaigns that are ads run by other interested groups.

So any study that fails to take account
this sort of intense mobilization efforts that were
poured into these states as compared to states,
Mississippi and Illinois, that one campaign had
essentially conceded and were ready hardly contested
at all because the results were a foregone conclusion,
any study that doesn't look at those factors -- the
amount of mobilization, the amount of money spent by
the campaigns and others -- is simply incredible.

Now, I'm not suggesting that changes in
turnout were caused specifically by the number of
appearances that the candidates made or their proxies
or the amount of advertising that either of the
campaigns put up. But what I am suggesting is that
first, those are much more I think credible
explanations of why voter turnout went up in those two
states and, secondly, that we simply can't -- the
point is that you can't prove what the causation was
in any of these cases. There are too many factors.
The studies that have been conducted are far too
crude.

So if there is any single take-away, I
would just suggest that any of these claims that voter
turnout actually goes up because of strict voter ID
requirements and some resulting increase in confidence
amongst the voting population should just simply be
looked at with a tremendous amount of skepticism.

SEN. DAVIS: Are you aware in your work
on behalf of the Brennan Center, are you aware of any
empirical data -- exit polling, surveys or
otherwise -- in which people were asked whether their
appetite for voting indeed increased by virtue of the
passage of photo ID laws in the states in which
they're voting?

MR. SKAGGS: I am aware of one study in
particular on that subject. We've heard about it from

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a couple of the folks that have testified here before this evening, and that's a study that was published in the Harvard Law Review not long ago. And the conclusion that that came to was that there was simply no correlation, there was no increase in voting based on any feelings of the possibility of fraud or the possibility that fraud would be addressed by voter ID.

MR. DAVIS: Do you think it might be a more valid analysis to compare states with and without photo ID requirements over a period spanning several election cycles in the same -- or the same national election cycle in order to determine the impacts of voter ID?

MR. SKAGGS: I think it would. And I think -- I'll echo an observation made by Dr. Moore earlier this evening which is that it's a shame that the empirical data is not there to the extent it could be. And I think studies of the sort that you've just described, Senator, would be very helpful in that regard.

The one thing I would add to the sort of proposed research that you talked about would be factors such as candidate campaign mobilization, the number of resources that were poured into the states. I think the more variables that you can plug into
these studies that look at issues that actually have
an impact on voters being mobilized, the more accurate
the data would be.

SEN. DAVIS: I want to ask you for a
moment about claims that are made that support the
argument for voter ID. I would like to hear your
thoughts on claims that are made by voter ID
supporters that suggest that thousands of dead people
or non-citizens are registering and possibly voting.

MR. SKAGGS: Well, we hear these sorts
of claims all the time. And what a detailed analysis
of these claims proves again and again and again is
that there is no "there" there. These are erroneous
reports. The biggest reason why we have these sorts
of claims and why they ultimately fail when they're
scrutinized is the data-matching that I talked about
earlier, the attempt to compare voter lists, list of
voters who cast ballots against lists of dead people
or felons, for example, that in many states are
disenfranchised.

And what we see again and again is that
initial data-matching comes up with huge numbers,
thousand of voters, and that when resources are
dedicated to actually going record-by-record and
case-by-case and match-by-match and investigating
this, it ends up that virtually all these fall away.

One of the most well-known examples is an article in the Atlanta Journal-Constitution that came out with a huge dramatic headline that over 5,000 dead voters had voted in Georgia over a number of years. And the specific example that was cited in that article was a gentleman by the name of Allen J. Mandel, M-a-n-d-e-l, who was deceased and who the article claimed someone had definitely voted in his name.

An investigation was conducted and it turned out there was actually an Allen J. Mandell, M-a-n-d-e-l-1 -- two l's as opposed to one -- who was very much alive and well, and he was actually the gentleman that cast a vote, eligible citizen, no wrongdoing at all.

But these sorts of claims, this 5,000 number was latched onto by elected officials, advocates, partisans, and was repeatedly trumpeted. And, of course, once the careful analysis is done and once each of these cases is looked at and it turns out that, in fact, there really is no problem, oftentimes those reports and those studies don't get as much air play.
Indiana experience in your comments and in your answers to my questions today. But even Appeals Judge Posner, an outspoken conservative appointee, said in his Opinion upholding the Indiana photo ID law -- and I quote him -- "No doubt, most people who don't have photo ID are low on the economic ladder and, thus, if they do vote, are more likely to vote for Democratic than Republican candidates. Thus, the new law injures the Democratic Party by compelling the party to devote resources to getting to the polls those of its supporters who would otherwise be discouraged by the new law from bothering to vote," end quote.

His comment seems to illustrate why Republicans use voter fraud claims to justify vote suppression activities that date back decades and that continue today. Do you know of any evidence of systematic voter fraud to contradict findings from academic studies that suggests that the only real reason for the photo ID push is to provide Republicans a partisan advantage?

MR. SKAGGS: I don't. The answer would be no. I don't pretend to understand why certain folks would support these policies. There's certainly some obvious explanations of the sort that you just gave. But I think Judge Posner was actually
right in the selection that you read. I think where he was wrong was when he went on later in the Opinion to say, "And that's not a problem." That's where I disagree with him.

And I don't disagree with Judge Posner, because I think anything that hurts the Democrats should be rejected. That's not why I disagree with him. My fundamental disagreement is because there is a certain cavalier attitude towards any sort of policy that disenfranchises people as long as it's just a small number of them. And I don't think 92 notes or 33 notes or 700 votes is an acceptable number of voters to be disenfranchised, particularly when the excuse for doing so just doesn't hold any water.

SEN. DAVIS: Thank you very much for your testimony and your answer to my questions. I have no more questions for this witness, Mr. President.

SEN. DUNCAN: Thank you, Mr. Skaggs. There are no other members queued up, so you are excused. Thank you for your appearance here today.

MR. SKAGGS: Thank you, Mr. Chairman.

SEN. DUNCAN: The Chair calls Wes Tailor.

Mr. Tailor, you have 10 minutes. Let me
introduce your written testimony first. I've got an
Exhibit 25, which is the written testimony of Robert
Simms. Is that --

MR. TAILOR: Yes, sir. That's our
Deputy Secretary of State.

SEN. DUNCAN: Okay. Would you
explain -- well, go ahead and state your name and who
you represent.

MR. TAILOR: Yes, sir. My name is Wes
Tailor. I am the Elections Director for the State of
Georgia, and I was appointed to that position by the
Secretary of State.

SEN. DUNCAN: And you have given us
Exhibit 23 -- or 25, rather -- as the written
testimony of Robert Simms, the Georgia Deputy
Secretary of State, before the United States Committee
on Rules and Administration. We'll submit that to the
record.

(Exhibit No. 25 marked and admitted)

TESTIMONY BY ROBERT A. SIMMS (SUBMITTED BY WES TAILOR)

MR. TAILOR: Thank you.

Well, thank you-all very much for having
me in the great State of Texas. I will try not to
take up too much of your time. Obviously, I can't,
since I only have 10 minutes. But I did want to
describe Georgia's experience with our photo ID law. 
And, obviously, it is up to you as legislators in the 
great State of Texas to decide whether that experience 
in Georgia has application for the voters in Texas 
while you consider this bill.

One of the things that you may want to 
consider is that I am an actual elections 
administrator. I have administered several elections 
under a photo ID statute. In Georgia, prior to the 
implementation of our photo ID law in August of 2007, 
voters could use, actually much like this current 
Texas bill, 17 forms of voter identification when they 
were voting in person.

The current statute allows generally in 
Georgia six forms of photo identification: A driver's 
license, a U.S. passport, government employee photo 
identification, a valid federal or state government 
photo ID, a military photo ID or a tribal photo ID.

If a voter shows up at the polls, much 
like has been discussed here, and they do not have one 
of those appropriate forms of ID, they may cast a 
provisional ballot and return within two days after 
the election to verify their information or verify who 
they are, at which point their ballot would be 
counted.
And I'm going to take issue right here with the previous testimony talking about provisional ballots and the allowance of provisional ballots and the failure of people to then either return to the registrar's office, as disenfranchisement. That is not disenfranchisement. Those people -- everyone in Georgia is allowed the ability to cast a vote.

Now, with the provisional ballots, under federal statute, however a provisional ballot is cast, there is an opportunity to then verify the individual or verify the information. That's true in Georgia. Those people were not disenfranchised; they were given every opportunity to have their vote count. Now, why they didn't return, we don't know yet. That is true. But to say it's only because that they couldn't get a ride, we don't know. They could have not been the people that they said they were when they arrived at the polls, but we don't know that at this point.

Now, the entire State of Georgia has been set as a Section 5 state, and DOJ did pre-clear our current statute. I will note, by the way, that DOJ did pre-clear the broader statute which is more akin to the current Texas Senate Bill, back early on, well before 2006.

But let me tell you about Georgia's
experience with the photo ID. The arguments that have been raised are numerous, that in-person voter fraud doesn't exist or it's not such a problem that you should think to address it. Well, I can tell you, as an elections official, that I take voter fraud very seriously. I also take each and every person in Georgia's ability to cast a vote very seriously. I would equal and hold those two on equal footing.

And what we have found in the administration of photo ID in Georgia is that it does not disenfranchise voters, but it does serve as a true barrier to voter fraud, an in-person voter fraud. Another argument that I've heard is that it will place an undue burden on however many people folks have come up with. In the litigation in Georgia, it was hundreds of thousands of individuals and you've heard, and so I won't go over and belabor that after four years of litigation, the most prominent lawyers in Georgia, one being a former governor, failed to find even one single individual who was unduly burdened by Georgia's photo ID statute. We've conducted 15 elections with photo ID. Georgia voters have cast more than nine and a half million ballots under photo ID, without a single issue or problem.

Looking at the 2008 General Election, we
had, as has been stated, the highest turnout we've ever seen, and it was about 700,000 more votes cast in 2008 than ever before in Georgia. By registration deadline, we had 550,000 new voter registration applications in 2008, as compared to 480,000 in 2004.

You heard that during the presidential prejudices primary, we had more than one million votes -- or I'm sorry -- 2.2 million votes cast in the presidential preference primary, which was more than a million than we had ever had cast in the presidential preference primary before, with photo ID requirement in place.

What's really interesting is that 100,000 more ballots were cast for the Democratic candidates than for the Republican candidates. For the General Election, Georgia has the option to mail in ballots without a photo ID or to show up in person with a photo ID. 92 percent of Georgians decided, elected, chose to show up in person with a photo ID when they had the choice not to do so.

Another argument I've heard today is that photo ID requirements place an undue burden on minority and elderly voters, and I've also heard that it places an undue burden on female voters. Well, I've heard all the reasons why you should discount the
statistics, but let me just give you what Georgia saw, based on 2004 to 2008.

Hispanic Latino votes cast went up by 140 percent from 2004 to 2008 in Georgia, with photo ID. Black votes, African-American votes went up by 42 percent. The white vote went up by 8 percent. Those casting votes who were 65 and older went up by 24 percent. And 65 and older voters still make up the single largest category of voters in the State of Georgia.

With respect to the increase in voting between male and female voters, male voters, the votes cast increased by about 17 percent, and female voters went up by 18 percent. So at least on the face of the votes and the number of votes cast with photo ID and without, there was no correlation with a suppression of any votes.

The other argument I've heard, that photo ID is designed to favor one party over another. And we'll tell you that in Georgia, we do not register by party. As I said, in the 2008 presidential preference primary, almost 100,000 more ballots were cast for the Democratic primary than the Republican primary. In the General Election, Sen. McCain did receive a majority of the votes for president.
However, Georgia's sitting Republican incumbent senator was forced into a runoff with his Democratic opponent very close behind in the vote totals.

At least from those figures, there does not appear to be a favoritism of one party over another with the photo ID requirement. I can tell you that Georgia's experience statewide shows that common sense voter ID requirements are needed and do not unduly burden voters. The arguments against that have been stated here by certain groups do not appear and still do not have any basis in fact and are pure hyperbole and empty rhetoric and are not seen by actual elections administrators on the ground.

Thank you.

SEN. DUNCAN: Thank you, Mr. Tailor.

There are no members queued up for questions. I appreciate your testimony.

MR. TAILOR: Thank you.

SEN. DUNCAN: The next witness will be J. Gerald Hebert.

Mr. Hebert, if you will approach. And do you have written testimony? You do?

And just for the record, Exhibit 26 is the written testimony of J. Gerald Hebert and will be submitted to the record.
(Exhibit No. 26 marked and admitted)

SEN. DUNCAN: Go ahead and state your name and who you represent. And you have 10 minutes.

TESTIMONY BY J. GERALD HEBERT

MR. HEBERT: My name is Joe Hebert, and I'm a voting rights attorney. I'm also Executive Director and Director of Litigation at the campaign legal center. Today I am here representing myself. I've spent over 20 years at the U. S. Department of Justice as a federal prosecutor of voting rights cases. I've taught courses on voting rights at Georgetown Law School and University of Virginia, among other schools.

But I want to start my testimony today a little different than most of the other witnesses. I'm going to start by making clear what I think is really going on here with the Texas voter ID bill. You see, this is just the latest in a series of measures taken by Texas Republicans in the state to harm voters within their own state, particularly minority voters being the real targets. And it was just a few years ago you enacted a redistricting bill --

(Applause from the gallery)

SEN. DUNCAN: (Raps gavel)
MR. HEBERT: -- that was aimed at --

SEN. DUNCAN: Just a minute, Mr. Hebert.

Any more outbursts, and the persons that are participating in that will be asked to leave the gallery. Thank you.

You can proceed.

MR. HEBERT: In 2003, there was a redistricting bill that was needlessly passed that was aimed at minimizing not only Democratic influence but hurting minority voters. Republicans in the State of Texas today, and particularly in the Senate, are using their majority status to enact legislation that can't be justified by urgency or need. Instead, it will simply make it harder for hundreds of thousands perhaps of Texans to vote.

They cast aside the bipartisan legislative tradition or rule, the two-thirds rule, to take up this issue so that they can ramrod the voter ID bill down the throats of the minority. And they've done so even though implementation of a photo ID bill will cost the state millions of dollar. So you Texans out there, that's where your tax dollars are going to go, to defend the measure before the Department of Justice and in the federal courts and then to implement and approve -- and implement it and
administer it if it ever is approved.

Now, I realize that saying these raw partisan politics is largely motivating this is a pretty serious charge, and so I'm going to take a few minutes to tell you on what I base them. First of all, understand that voter ID bills are of recent vintage and they've only been enacted in states where Republicans control the entire process in the state, they control the Governor's chair, the Senate and the House. That's where this has come up recently, And it's not by accident. It's being considered in Texas, as it was in those other states, without policy substance. There simply is no widespread organized or even occasional voter impersonation fraud in Texas that will be addressed by this bill.

Now, I have personal experience with this in Texas, because I filed a lawsuit against Greg Abbott and the Secretary of State challenging their assertions that there was a voter fraud epidemic here in the state. And guess what? There isn't. I've also led Attorney General Abbott to admit that persons that he prosecuted for what he called in various press releases an epidemic of voter fraud -- and they were, by the way, with one exception all elderly black and Latino political activists, and all of them were
Democrats -- that they hadn't engaged in any fraud at all whatsoever.

The particular type of voter fraud that this legislation is purported to address, voter impersonation, is virtually unheard of. There is considerable evidence -- and you've heard it today -- that enacting a voter ID bill will create a series of barriers that make it harder for senior citizens, younger voters, poor people, people of color, women in general, to exercise their right to vote.

Now, the fact is that most, if not all, of these groups are growing as a percentage of Texas' voting population, and most of them tend to vote Democratic. So that skew tends to explain to me the urgency of Republican leadership in pushing this bill. This is about partisan politics and protecting political power and marginalizing your opposition, exactly what you did in the redistricting bill. And I have personal experience with that as well, because I was one of the lawyers who bought a suit against that and took it to the Supreme Court where we did prove that it discriminated against Latinos in South Texas. That's what this is about.

Now, the Republican members of this Senate and in the House, they can go ahead if they
want to and choose to use their majority status to waste Texas' tax dollars of hard-working Texans during the short legislative session in this way. That's their choice. They have that power.

But it's important to realize that the path being taken and the methods used by Republicans have ramification that extend beyond politics. What's at stake is much bigger than a Republican majority imposing its will on a Democratic majority.

The path and method in enacting the photo ID bill is the latest in a long series of relentless attacks on minority voters by this state, which is covered by the Voting Rights Act, because you have a long history of denying minority people the right to vote. That's a simple fact.

Now, Texas, along with other deep south states, has a long dark history of using voting as a way to keep people on the reservation. Let me give you, however, more recent examples than ancient history involving the office of your current Attorney General who has used his office to manufacture false claims of voter fraud.

Take, for example, this: He created a training manual about main-in balloting to try to go around and inform DAs about how to find voter fraud.
And on one of his PowerPoint slides, he said, "Hey, they use certain stamps to mail their ballots, these fraudulent people." And he had a big picture of the stamp, a sickle cell anemia stamp featuring a prominent African-American woman holding her baby. Boy, that's a real subtle indicator, isn't it, of voter fraud and who is committing it.

He sent investigators from the Attorney General's office -- get this! -- to peep into the bathroom window of my client, an elderly African-American woman in Fort Worth, when she was coming out of the shower. And they were there to harass her about whether or not she had helped her neighbors vote. What a terrible thing to do, help your neighbors to vote if they're shut in and disabled people.

The Attorney General here was asked to intervene to help the Prairie View students in Waller County. In three years he did nothing. Repeatedly meetings were asked with the Attorney General to ask him to come in and help them. It took -- get this! -- the Bush Justice Department to use Waller County, to step in after two years of inaction by the Attorney General and protect the African-American students at the university. Ancient history? No. 2008.
Now, the cases that were brought against elderly Latino and African-American women by Mr. Abbott, in which he claimed were voter fraud, were the following activities: They actually had the audacity to go to their neighbors' homes, at the neighbors' homes request, who are often very elderly and disabled people, to pick up their mail-in ballot that had already been sealed and drop it in the mail to them.

Notice, I didn't say they marked the ballot for them. Notice I didn't say that they pressured the neighbor. They simply mailed a ballot, and then they were prosecuted for vote fraud. Where is the fraud? Kind of like the old commercial, "Where's the beef?"

And when they stood up and filed a lawsuit saying, "Hey, we weren't -- we didn't engage in voter fraud," Greg Abbott's former Solicitor General, Ted Cruz, put out a press release and said, "Oh, none of their claims have any merit, because they're all a bunch of criminals."

Just last week we find the Attorney General's office failed to comply with a proper open records request from Texas legislators who asked him for records about voter impersonation fraud, the
so-called target of this bill.

And then there is a glaring example --
and it's detailed in my testimony -- where you had
voter fraud apparently committed in Highland Park, a
very rich areas of Dallas, Texas, where, by the way,
George Bush and Dick Cheney lived before they went in
the White House, where Republicans engaged in voter
fraud and the Attorney General was asked to prosecute
and investigate by the DA in Dallas, and he failed to
do so. Explain that lack of even-handedness.

Now, these recent actions by the
Attorney General should serve as an important warning
to those of you who are going to vote on this
legislation. This hearing is a sham, just like your
redistricting public hearings were a sham. You said
you wanted to listen to the voters, and 90 percent of
Texans said, "Don't do redistricting." Did you
listen? No. You were hell bent on enacting Tom
DeLay's dirty work, because you couldn't stand up to
him and pass the bill.

Let me say, since I have only a few
minutes left, one minute left to say this: I can
assure you that as a former Justice Department
official, all of the actions that I just described,
along with your procedural departures from the norm,
such as abolishing the two-thirds rule, not allowing
certain rules to be enforced, even though they're in
the Texas rules, as Sen. West said this morning, that
all of that will come back to haunt you, because those
are indicators under a decision called Arlington
Heights, in the Supreme Court that really what's going
on here is not about good government reform, this is a
measure that has as its root an illicit purpose. And
you-all ought to know a lot about that, because it's
been going on in Texas for a long time.

Thank you.

QUESTIONS FROM SENATE FLOOR

SEN. DUNCAN: The Chair recognizes

Sen. West.

SEN. WEST: Thank you very much,

Mr. Chairman.

Mr. Hebert, as it relates to
non-citizens, what about those who claim that
non-citizens are on the voters roll and will a voter
ID law for voting stop that?

MR. HEBERT: A photo ID bill will not
affect that whatsoever. Right now you don't have to
be a citizen to get a driver's license. Many people
who are non-citizens, if they end up on the rolls --
and this has been true in not only Texas, it's true in
other states -- that they go to get a driver's license and there is a -- in many places, you automatically get put on the voter registration rolls if you check a box that says, "Do you want this to double as a voter registration application?" So they end up being on the rolls.

Now, there is no indication in most states that these people ever vote. But if they do, it's usually because someone has given them -- you know, they've gone to the polls and they've been given a registration card. But it happens so rarely. The photo ID bill wouldn't affect that at all, because they get a photo ID.

SEN. WEST: You know, there's been some questions raised about whether you need a photo ID to get on an airplane or cash a check. What is the answer to that question?

MR. HEBERT: You do not need a photo ID to get on an airplane in this country. In fact, the Department of Homeland Security's TSA office has regulations that they've issued about this. If you go to the airport and you don't have your picture ID, they will pull you aside, put you in a room, ask you a series of questions, make you sign a statement, and then you will get on the plane. In fact, I believe
Dr. Moore who testified earlier today did not have his picture ID with him when he came down here, and he went through that exact procedure.

SEN. WEST: No photo ID?

MR. HEBERT: Yes, no photo ID.

SEN. WEST: How does the legal --

MR. HEBERT: And he was who he said he was, by the way, so he wasn't impersonating somebody else.

SEN. WEST: Okay. How does the legal standard that the Department of Justice will employ to any Texas voter ID law differ from the legal standard the Supreme Court used to decide the Indiana case?

MR. HEBERT: The Indiana case was a constitutional challenge, what we call a facial challenge to a statute. In a lawsuit like that -- it didn't even involve race, by the way. I mean, we haven't said that in all the debate today. But the Indiana case, there was no allegations that the Indiana bill violated the Voting Rights Act in the Indiana case. Instead, it was a challenge that the voter ID bill there burdened the fundamental right to vote, in violation of the constitution.

It was challenged even before it went into effect, so that's why I always find it amusing.
that people quote the Supreme Court that say, "They
couldn't produce a single case." Well, of course.
They hadn't had an election yet by the time the case
was brought to trial and the decision was made.

So the legal standard there is that you
have to prove that it's an unconstitutional burden on
the right to vote, fundamental right to vote. It's a
very high burden, because the state is given
considerable latitude when it comes to regulating
elections and voting.

In the Department of Justice proceeding,
the total focus is on race and ethnicity, something
that wasn't at issue in Indiana when the case went to
the Supreme Court. There the state, as was reported
earlier, bears the burden of demonstrating that
enacting a photo ID bill will not lead to a
retrogressive effect from minority voters in the state
and is not being enacted with a discriminatory
purpose.

SEN. WEST: So the Indiana case is not
really applicable to Texas?

MR. HEBERT: Not really. When it comes
to the Section 5 pre-clearance process, it really has
very little, if any, relevance.

SEN. WEST: Okay. Now, what relevance
is it to obtaining Section 5 pre-clearance if the vast
majority of minority legislators vote against a
particular bill?

MR. HEBERT: Well, there is a Supreme
Court case on point now that's called Georgia vs.
Ashcroft where Georgia enacted a redistricting plan.
And virtually all but I believe one legislator voted
against the bill. And when the Legislature went for
pre-clearance, there were arguments made by
Republicans, actually, that the redistricting plan
violated the voting rights of minorities.

And the State of Georgia produced voting
records and statements from minority legislators
saying, "We support this redistricting plan. And the
Supreme Court, in fact, cited that as evidence that
there was not a retrogressive effect and that, in
fact, there was no discriminatory purpose.

SEN. WEST: Have you had a chance to
look at the draft of the bill that's being proposed?

MR. HEBERT: I have looked at it, yes.

SEN. WEST: In terms of direction for
this legislative body, can you kind of give us your
assessment of whether or not this, quote unquote,
voter ID bill is needed in the State of Texas?

MR. HEBERT: Well, I mean, I know that
there are no cases -- in fact, I believe the Attorney General's Deputy Attorney General testified just last year that there were no proven cases of voter impersonation fraud that would be addressed by the photo ID bill. That was testimony that Mr. Eric Nichols gave last year. I was at that hearing, by the way, and I brought actually his statement, the news articles that quoted him.

So I know that that kind of a problem -- this is a bill in search of a problem and doesn't really -- in my mind doesn't really address a lot of what is really voter fraud in Texas, which are things like voter intimidation of minorities -- that's voter fraud -- minorities who are being denied the right to vote, because they're being intimidated and harassed by people. That's voter fraud, and that ought to be the kind of measure that ought to be enacted by the Texas Legislature.

SEN. WEST: All right. Thank you very much.

SEN. DUNCAN: Sen. Wentworth.

SEN. WENTWORTH: Welcome to Texas, Mr. Hebert.

MR. HEBERT: Thank you, Senator.

SEN. WENTWORTH: Welcome back, I should
MR. HEBERT: Yes, sir.

SEN. WENTWORTH: I gathered from your prepared remarks tonight you were critical and did not approve of the Legislature's drawing of Congressional districts in 2003?

MR. HEBERT: I did not. That's correct, I did not approve of it.

SEN. WENTWORTH: Now, recognizing that you don't live in Texas, you live in I guess either Maryland or Virginia or Washington, D.C., you may not know the answer to these questions and I don't expect you to, but you might, because you're an expert in redistricting matters and have represented folks in redistricting matters in Texas.

Do you happen to know how many statewide elected officials are in Texas?

MR. HEBERT: The total number I don't know. I believe they're all Republicans.

SEN. WENTWORTH: There are 29, and they're all Republicans and they've all been Republicans for over a decade.

Do you remember offhand how many members of Congress we had before the 2000 census?

MR. HEBERT: You had 30, I believe.
SEN. WENTWORTH: Yes, sir, we had 30. Do you remember the partisan division of those 30?

MR. HEBERT: It was two-thirds Democrat at least. 21/9 I believe.

SEN. WENTWORTH: It wasn't quite that bad; it wasn't quite. It was 17 Democrats and 13 Republicans.

MR. HEBERT: Prior to 2000?

SEN. WENTWORTH: Yes, sir.

MR. HEBERT: Okay.

SEN. WENTWORTH: And as a result of the 2000 census, Texas had two new congressional districts added. So we went from 30 to 32. And as a result of the redistricting that was done by federal court in 2001 and the election, it became 17 Democrats to 15 Republicans --

MR. HEBERT: I remember that.

SEN. WENTWORTH: -- in a state that had 29 statewide elected Republicans. We elected George Bush governor, we re-elected George Bush governor, and this state voted for George Bush as President of the United States. And, yet, this state, even after 2002, was still sending a Democratic majority congressional delegation to Washington D.C., to fight President Bush. And it didn't seem to those of us in the
majority here that that was fair. And that, Mr. Hebert, is why we re-drew the lines in 2003.

MR. HEBERT: Do you want me to comment on that or are you --

SEN. WENTWORTH: Be pleased to have you comment on it, yes, sir.

MR. HEBERT: I would just make two points, Sen. Wentworth. One is that it is true that Democrats controlled 17 of 32, as of 2003. But in probably five of the districts that Democrats held -- for example, Ralph Hall, Max Sandlin, Jim Turner, Charlie Stenholm, all Democrats -- in those districts, the Republicans were winning. The statewide office-holders you mentioned were carrying those districts, including George Bush, as I recall.

So the people who were actually voting in those districts, those five districts or so, were actually splitting their tickets and maybe voting for Republicans at the top of the ticket. But then when it came to the congressional district, they liked the fact that maybe Charlie Stenholm did support George Bush a lot of the times, or Ralph Hall did, so they ended up splitting their vote.

So even though it was 17 Democrats, really the way the districts were drawn to my mind was
really, a vast majority of them were drawn to skew in
favor of the Republicans. That is to say that they
roughly equated with the Republican share of the vote.

The second point I would make is that --
and a lot of Texans don't know this -- but as a result
of the redistricting in 2003, it is true that all the
people I just mentioned, except for Ralph Hall --
and I would add Martin Frost to the list -- all left
Congress.

There was a huge amount of tenure in
those people, and power in Washington is given out on
the basis of how long you've been there. So as a
result, Martin Frost was bounced out of Congress by
the map when he ran. Charlie Stenholm was. Martin
Frost would be Chairman of the Rules Committee today,
because Democrats control the House. Charlie
Stenholm would be Chairman of the Agriculture
Committee today, and Jim Turner would be Chairman of
the Homeland Security committee, very important
committees in Congress, all of whom are now gone
because of the redistricting that was done here in
2003. So it really ultimately -- and I know you
Texans don't really probably look on New York very
favorably, but the Rules Committee, that's now
headed by somebody from New York instead of somebody
from Texas, as a result of just what I saw was a partisan power grab in 2003. That would be my answer.

SEN. WENTWORTH: Well, let me give you a little more history about Texas redistricting when Democrats controlled the redistricting process. In 1971 when we had 25 members of Congress, 22 were Democrats and only three were Republicans. And the Democratic majority, after the 1970 census, looked at those three Republicans and said, "How in the world do we allow three Republicans to be elected from Texas?"

So they sent us out to eliminate those three Republicans. The three back then were George Bush from Houston, Jim Collins from Dallas and Bob Price from Pampa. And as they were drawing the lines, they realized too many Texans in Houston were voting Republican, so they couldn't get rid of George Bush.

And they realized too many Texans were voting Republican in Dallas and they couldn't get rid of Jim Collins.

But they looked out to the Panhandle and realized that Bob Price from Pampa had his congressional district right next to Wichita Falls, which had as its congressman a Democrat, Graham Purcell, who chaired the House Agriculture Committee.

And so the Democratic majority in the Legislature
decided that those farmers and ranchers in West Texas
would vote for the Chairman of the House Ag Committee,
so they paired, intentionally paired those two
congressmen to run against each other.

But the voters got to vote, and they
voted for Bob Price and defeated the Chairman of the
House Agriculture Committee. Thirty years later when
my party was in control, one of the congressmen that
you failed to mention was targeted for defeat, but he
wasn't defeated. Chet Edwards from Waco was reelected
even though he was supposed to lose.

So, fortunately, voters had the final
say. And in my judgment, both parties have been
guilty of doing things that they probably shouldn't
have been doing.

I appreciate you being here.

MR. HEBERT: Thank you. Thank you,
Senator.

SEN. DUNCAN: Senator Hegar.

SEN. HEGAR: Thank you, Mr. Chairman.

Thank you, Mr. Hebert, for being here.

I can tell you're very passionate, and definitely we
appreciate that. So I appreciate you being here and
stating everything that you have.

I had just a couple of questions as I
was listening to your testimony. One, I was curious
on the issue of voter fraud allegations in Highland
Park that you mentioned. And I just wanted to make
sure that you were aware that Craig Watkins, the
Criminal District Attorney, sent a letter to our
Attorney General on March 14th of '07, formally
thanking for the investigation, yet also declining to
pursue any prosecution in that case. And I just
wanted to make sure that you were obviously aware of
that; so, therefore, the decision was back in the
local jurisdiction not to pursue that prosecution.

And if you would like to comment on
that, please.

MR. HEBERT: I am aware that the
District Attorney did decline himself to do it.
Oftentimes when a local DA makes a decision like that,
it's not based, obviously, on whether or not he or she
thinks there is voter fraud that has taken place. But
in any event, you know, they often defer to the
Attorney General who has far greater resources for
prosecuting such cases than the locals do.

I would have to talk to Mr. Watkins and
find out precisely what reasons he gave.

SEN. HEGAR: Right. And I just wanted
to make sure that we're all able to understand that
there was decisionmaking going on in the local
jurisdiction as to how to pursue this matter as well,
so it's not just a one-sided street, and make sure
that everybody knows that. And hopefully we can
figure out some further discussions on that, because I
don't know the exact facts on it either.

Another thing I was curious, you
mentioned, I guess it was your client, with the window
of the bathroom. Now, I've heard that story before
and so I wanted some clarification on that, because
since that was your client, you can obviously be the
person to tell me this, since I've heard this story
before.

This situation -- and I wanted to make
sure this is the right one -- where people come to the
doors but the home of the front door is also adjacent
to the window. The window is right immediately next
to the door. And so, therefore, when anybody is
standing at the front door, the lady was going to see
them outside her bathroom window, because it's
immediately adjacent to the door. And so somebody was
not necessarily going around the fence, over the
fence, back through the back of the yard.

MR. HEBERT: Well, they were --

SEN. HEGAR: Is that the structure?
I've heard that story before, and I just wanted to make sure, since you were here, I could find out the real facts.

MR. HEBERT: Well, you've got a pretty good handle on it, but let me just give you a little bit more --

SEN. HEGAR: Please; please.

MR. HEBERT: -- facts. Two investigators come up from the Attorney General's office to interview Gloria Meeks, elderly African-American woman. She's in the shower. And as I recall her home -- and I haven't been there in a number of years now -- but you walked up to the front door which is, say, right in front of you here. On the porch, down a little bit down from there is a window that does go into the bathroom, and the investigators went into the window first. They didn't knock on the door first; they went into the window first, which just struck me as pretty unusual, because there was actually somebody there in her living room waiting to drive her to the doctor. And when --

SEN. HEGAR: How far is the window from the front door?

MR. HEBERT: Several feet --

SEN. HEGAR: Okay.
MR. HEBERT: -- a couple of feet.

SEN. HEGAR: Okay.

MR. HEBERT: But the guest, who was her driver taking her -- you know, giving her a lift to the doctor, I think it was, heard her yell and scream that there was somebody looking at her while she was getting out of the shower. And it turns out it was the Attorney General's investigator.

SEN. HEGAR: You know, I would probably scream, too, if y'all were on either side of the window, I can imagine. I just wanted to make sure everybody understood, if I heard the story correctly. It was very close proximity, and I don't know how anybody walked in the yard.

MR. HEBERT: Well, yes.

SEN. HEGAR: Obviously, I can understand how that happened. And it would disturb me very much so if someone would go around to the back of the house and peep in windows, which is extremely a long ways off. And I just wanted to make sure we understood the context.

MR. HEBERT: Well, the explanation by the investigators was almost as bad as the offense, because when she protested to them, they said, "Oh, I'm sorry. We thought we were looking in your kitchen
window."

SEN. HEGAR: I imagine they figured out pretty quickly that wasn't a kitchen window.

MR. HEBERT: Yes, they did.

SEN. HEGAR: At least I hope so.

MR. HEBERT: I think the door is the best place to start.

SEN. HEGAR: Let me ask, if you don't mind, allegations that are sent to the Attorney General for prosecution -- in other words, they don't go out and seek prosecutions; people send that to them -- and I was curious, you had mentioned about the lawsuit that you had against the Attorney General, and I was curious. How did that end?

MR. HEBERT: We ended up filing a stipulated dismissal where the Attorney General agreed to modify his prosecution policies in how he would prosecute cases, particularly cases where the only offense was the hyper-technical violation, if you will, of failing to sign the mail-in envelope --

SEN. HEGAR: Okay.

MR. HEBERT: -- which was really important, because that's what most of our clients have been investigated or prosecuted for.

SEN. HEGAR: And so there was something
entered into the record at the court, and it actually
did not go to trial, but there was some settlement
prior to, and I guess you had prayer for five or six
different issues for relief. But it was really just
an issue put into the record for this one narrow
aspect that you were asking for. Is that correct?

MR. HEBERT: Right. All the rest of the
case we agreed to dismiss our challenges -- similar to
Indiana, challenges to the fundamental right to vote
of various mail-in ballot --

SEN. HEGAR: Was there an admission on
the that the state was violating some statute?

MR. HEBERT: No, no.

SEN. HEGAR: Okay.

MR. HEBERT: If you're going to settle a
case, you're not going to make the other side -- you
know, let you rub their nose in anything.

SEN. HEGAR: Okay. Well, let's hope
not, but sometimes those things happen. So anyway,
everybody just walked away, and there were some
changes, technical changes to the manual and that was
the end of that case?

MR. HEBERT: Well, they agreed to
redesign the ballot envelope for the mail-in ballots,
because the problem was that, as you probably know, in
a mail-in ballot, there was no place for a person who simply mailed the ballot, to sign it. You could sign it if you were a witness and you could sign it if you provided assistance. But there was no place, if you simply mailed it.

So we agreed to work with the SOS to modify that and also to change one other procedure in Texas, and talked with them about, you know, better ways to do that.

SEN. HEGAR: Okay. Well, good. I just wanted to make sure I had that. And then one other thing, since you brought up Waller County, and Waller County is a little near and dear to me, since I'm a lifelong resident of Waller County. And I wanted to make sure that I understood exactly what you're talking about when you were talking about Waller County, if that was in regards to voter eligibility of students at Prairie View campus several years back and to make sure that -- I think Sen. Ellis had asked for back then in maybe '04, if I remember correctly, for some kind of statement to clearly state from the Attorney General what the definition of the law was and that people who reside in a county, intend to reside there, they do reside there, they're eligible to vote. And that was clearly demonstrated in the
1 Opinion that was given to Sen. Ellis at that time. Is
2 that the situation that you were talking about?
3
4 **MR. HEBERT:** The situation in Waller
5 County for Prairie View students has been going on, as
6 you correctly point out --
7
8 **SEN. HEGAR:** Trust me. I've lived there
9 all my life.
10
11 **MR. HEBERT:** Okay. -- at least since
12 2004. The issue that I became involved in, and I
13 represented several of the Prairie View students, was
14 last year where a number of them were being denied the
15 right to become deputy registrars, and they were being
16 denied to register voters without certain burdens
17 being put on them, like limits of how many
18 applications and so on.
19
20 And when we went to the Justice
21 Department, as a former official of the Justice
22 Department, I was able to go to the federal
23 prosecutors and say, "This is a violation of their
24 fundamental rights here, and it seems to be race-
25 based." And the Justice Department, to their
26 credit -- you know, I didn't give the Bush
27 Administration much credit for prosecuting voting
28 rights cases on behalf of African-Americans -- but
29 they stepped up and Waller County signed a
comprehensive consent judgment in --

SEN. HEGAR: Very comprehensive.

MR. HEBERT: -- admitting violations.

And --

SEN. HEGAR: Well, I think the issue was expanding the number of voting locations in the county and trying to make sure everybody was tended to in dealing with those issues.

MR. HEBERT: That was one issue. But I think the remedy actually also extended to ensuring that they would go on campus, the registration officials --

SEN. HEGAR: Correct; correct.

MR. HEBERT: -- and talk --

SEN. HEGAR: Correct; correct.

MR. HEBERT: -- more with the students rather than putting barriers up.

SEN. HEGAR: Correct; correct. And I can just say this: If there is anything dealing with the people that I represent in any of the district -- and I can tell you, especially with Waller County -- I would appreciate, if you don't mind, calling me, because I will get involved in any form or fashion, because I want to make sure we don't have any issues in the county whatsoever. So you have my pledge on
that.

MR. HEBERT: Thank you.

SEN. HEGAR: Thank you very much.

MR. HEBERT: Thank you, Senator.

SEN. DUNCAN: The Chair recognizes Sen. Shapleigh.

SEN. SHAPLEIGH: Thank you, Mr. Chair.

Mr. Hebert, we've discussed since the evening started the summary of the Attorney General's investigation and prosecution of some of these cases which he characterized in his March press release as an "epidemic of fraud." Can you give us an overview of how many cases were brought, how many were actually indicted and who actually was involved in the indictments?

MR. HEBERT: Well, there have been about 30 cases brought, as I understand it, by the Attorney General over the last few years since he launched this voter fraud project initiative, about 30 cases. My recollection is, there were roughly 50 people involved in these cases. I may have that part wrong, but that's sticking in my mind. For the most part, they were issuing involving mail-in balloting, these 30 case. They were not cases -- and not a single instance that I can remember involved voted
impersonation of somebody pretending, at the polls, to
be somebody else.

SEN. SHAPLEIGH: How many of these
individuals that were indicted were minorities?

MR. HEBERT: I don't really have a hard
figure on that. What I do know is that of the people
who were prosecuted for simply mailing the ballot of
other people, there were I believe 13 of those, and 12
of them were Latinos or Hispanics or African-
-Americans, and all 13 were Democrats. By and large, I
don't know of any Republicans in those 30 cases that
have been defendants or indictees.

SEN. SHAPLEIGH: Now, these names I
think people here on this floor know, or some of us.
Willie Ray, who I think lives in Sen. Eltife's
district.

MR. HEBERT: Willie Ray was my client.

SEN. SHAPLEIGH: City Councilwoman, 69
years old, African-American from Texarkana. Walter
Hinojosa, retired school teacher and labor organizer
from here in Austin. What was the crime of these
individuals? What were they charged with?

MR. HEBERT: Well, Mr. Hinojosa was
never charged with a crime. He was a plaintiff in the
lawsuit, and he was one of my clients.
Ms. Ray was charged with mailing -- possessing ballots of other people. And what was described in the case, the indictment, and what was described in our lawsuit was that she had gone to several shut-ins and taken their ballots and dropped them in the mail for them, and sometimes put a stamp on it, because they didn't have the money for a stamp.

SEN. SHAPLEIGH: And so what's the alleged violation of the law in that act?

MR. HEBERT: Possessing the ballot of another person and not putting your name on the carrier envelope.

SEN. SHAPLEIGH: And that was what she was prosecuted for?

MR. HEBERT: That's correct.

SEN. SHAPLEIGH: Thank you.

SEN. DUNCAN: Sen. Williams.

SEN. WILLIAMS: Thank you, Mr. Chairman. Is it Mr. "A-bear" or Mr. "He-bert"?

MR. HEBERT: In Louisiana it's "A-bear."

In Texas it's "He-bert."

SEN. WILLIAMS: Well, we're in Texas, so you'll be "He-bert" then, I guess, although I have some "A-bears" in my district and it's in Texas. So I just wanted to be sure I had it right.
Mr. Hebert, I would like to go back to the Texas redistricting, because my recollection is that you represented the Democrats when we did the 2003 congressional redistricting. Is my memory correct about that?

MR. HEBERT: That is correct.

SEN. WILLIAMS: And would it be fair to say that in the -- I'm not an attorney. So, I mean, I'm going to kind of try to summarize this in non-legal language. But my recollection is that the basic argument you had was that it was unconstitutional for us to draw a map that reflected the majority voting patterns that Sen. Wentworth referenced, that we had to protect those incumbent Democrats. Is that the gist of the argument that you had, it was unconstitutional, what we were trying to do to redraw this map so that it reflected the majority will of the state?

MR. HEBERT: No, that was not the claim.

SEN. WILLIAMS: What was it, then?

MR. HEBERT: We had a partisan gerrymandering claim as one of the claims in the lawsuit, which was the allegation that a mid-decade redistricting that was being undertaken solely for the purpose of achieving partisan gain -- that is, to
replace Democratic officeholders with Republican officeholders in some districts -- that that was a violation of the 14th Amendment's prohibition on partisan gerrymandering.

SEN. WILLIAMS: And I think we're saying the same thing. You're just phrasing it a little differently than I would. And then in Pennsylvania, you also represented the Democrats up there. But wasn't the argument in Pennsylvania that it was unconstitutional to have a congressional map that didn't reflect the will of the majority there?

MR. HEBERT: No. First, I did not represent the plaintiffs in the Pennsylvania case. I was not involved in that lawsuit as one of the attorneys. The claim there was a similar partisan gerrymandering claim, but it did not include the mid-decade aspect of it, which we in Texas took the position that when you do redistricting in mid-decade and you're replacing a perfectly valid map with another map, that that creates a presumption that you're doing it for partisan purposes, because why else would you do redistricting twice? Most legislatures don't like to even do it once.

SEN. WILLIAMS: And you mentioned earlier your association with Martin Frost. Have you
represented him? Are you friend with him? Can you
tell me a little bit more about what your relationship
with him is?

MR. HEBERT: Martin Frost is a former
client of mine. I would consider Martin Frost a
friend. I went to his wife's funeral two years ago.
I don't socialize with Martin Frost.

SEN. WILLIAMS: I'm sorry. Could you
repeat -- I missed part of what you said. I think you
said he was a client of yours. And what did you say
after that?

MR. HEBERT: He was a former client of
mine.

SEN. WILLIAMS: I see.

MR. HEBERT: I said I would consider him
a friend, but I don't socialize with him. I haven't
seen him in a couple of years, probably in person.
And I think the last time I saw him was when I
attended -- I stand corrected. I saw him about two
months ago at a meeting at a law firm. But I think
the time before that was at his wife's funeral that I
attended.

SEN. WILLIAMS: And what about Eddie
Bernice Johnson, the African-American congresswoman,
have you ever represented her?
MR. HEBERT: I have represented her in the past, yes.

SEN. WILLIAMS: Okay. And during a redistricting trial, isn't it true that she pointed you out in open court from the witness stand and said that you had been her attorney and that you had lied to her and that you had stabbed her in the back and that you had double-crossed her when she was your client, because you wanted to curry favor with Martin Frost and the Anglo Democrats with more political power? Did that happen?

MR. HEBERT: She did make some accusations in open court about me. I don't remember that precise language. I thought, frankly, that she made some of those allegations against Martin Frost.

SEN. WILLIAMS: So are you saying she was lying?

MR. HEBERT: I will tell you that I did not -- I never have lied to any client, including Eddie Bernice --

SEN. WILLIAMS: That's not what I asked you. I ask you, was she lying?

MR. HEBERT: If she said that I lied to her, then she was not telling the truth.

SEN. WILLIAMS: Okay. And then one last
thing. In 2003, is it true, the story that I've heard, that we've got -- that you were caught on tape stealing maps from the redistricting room? Couldn't you be disbarred for that kind of activity?

MR. HEBERT: I will answer the second part first. Yes, you could be disbarred for that activity. And I never stole any maps. I was never --

SEN. WILLIAMS: Well, I understand that there is actually a videotape of you taking maps from the redistricting room. Is that not -- that's not true? Those videotapes don't exist?

MR. HEBERT: That is not true. I have never seen such a tape, but I never took any maps from any redistricting room.

SEN. WILLIAMS: Okay. Thank you.

SEN. DUNCAN: Members, it's 12 o'clock, and the Court Reporter has been serving us well since about 12:30. And we have a relief coming in at 12:00. She's been going for two and a half hours straight now. And so I'm going to --

SEN. LUCIO: Mr. President?

SEN. DUNCAN: -- ask the Committee --

Sen. Lucio?

SEN. LUCIO: I had asked you earlier --

I do have with me the correspondence from my Senate
district, from the District Attorney there from
Hidalgo County. And I would ask at this time to be
able to present it to you and to each member of the
Committee of the Whole. It's addressed to the
Committee of the Whole.

SEN. DUNCAN: Well, certainly. Bring it
down and we will put an exhibit number on it. And it
will be Exhibit No. 27, and it's dated today. Is that
correct?

SEN. LUCIO: Yes, it's dated -- no.
Actually, it's dated March the 6th.

SEN. DUNCAN: Okay. And it's from whom?
SEN. LUCIO: It is from Rene Guerra,
Criminal District Attorney, Hidalgo County, Texas.

SEN. DUNCAN: All right. If you'll
bring that down, we'll submit that into the record as
Exhibit No. 27.

(Exhibit No. 27 marked and admitted)

SEN. LUCIO: Thank you, Mr. President,
and thank you, members.

SEN. DUNCAN: And members, with that, we
will take a 10-minute -- we'll stand at ease for 10
minutes, until 12:10 a.m., to give our court reporter
a break and I think do a transition there.

(Recess: 12:00 midnight to 12:17 a.m.)
CERTIFICATE

STATE OF TEXAS )
COUNTY OF TRAVIS )

I, Aloma J. Kennedy, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the above-mentioned matter occurred as hereinbefore set out.

I FURTHER CERTIFY THAT the proceedings of such were reported by me or under my supervision, later reduced to typewritten form under my supervision and control and that the foregoing pages are a full, true and correct transcription of the original notes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 25th day of March 2009.

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

IN RE:
CONSIDERATION OF
SENATE BILL 362

COMMITTEE OF THE WHOLE SENATE
WEDNESDAY, MARCH 11, 2009

BE IT REMEMBERED THAT AT 12:17 a.m., on
Wednesday, the 11th day of March 2009, the above-
entitled matter continued at the Texas State Capitol
Senate Chamber, Austin, Texas, before the Committee of
the Whole Senate; and the following proceedings were
reported by Kim Pence, a Certified Shorthand Reporter
of:
VOLUME 2  PAGES 481 - 870

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PROCEEDINGS
WEDNESDAY, MARCH 11, 2009
(12:17 a.m.)

SEN. DUNCAN: The Committee of the Whole will come back to order. Members, we -- our very capable court reporter, Ms. Kennedy is -- we're doing a transition, and we let her have the rest of the night off.

And we have Kim Pence who is with us, who will continue taking our testimony, and if -- we'll continue to observe that so that she can get a good record.

The next person on the queue is Sen. Zaffirini. Sen. Zaffirini, you are recognized.

SEN. ZAFFIRINI: Thank you, Mr. President. And first, could we recognize the court reporter who has been with us for 12 hours? She certainly does deserve a round of applause.

(Applause)

SEN. ZAFFIRINI: Thank you.

QUESTIONS FROM SENATE FLOOR (CONTINUED)

SEN. ZAFFIRINI: Mr. Hebert, I know that you have read the bill. Have you also read the fiscal note?

MR. HEBERT: Yes, I have.
SEN. ZAFFIRINI: And did you see that it says that there would be no fiscal implications to the State if this bill were passed?

MR. HEBERT: I did see that.

SEN. ZAFFIRINI: Do you believe that fiscal note?

MR. HEBERT: While I accept it at face value, I think it's preposterous.

SEN. ZAFFIRINI: Do you -- why do you believe that that -- that if we pass the lot it will cost the State millions of dollars, according to your testimony?

MR. HEBERT: Well, I think it will cost money because notwithstanding the fact there may some line item in the Secretary of State's budget, I can't believe that there's a line item that would cover the cost of seeking pre-clearance and gathering all of the data necessary, all the staff time to do that; and then to go to the Justice Department, which is going to have a very skeptical eye about this bill.

Remember, they recommended -- the career staff recommended that the Georgia map be blocked. And if you read their memo, which is now a matter of public record, there was -- I think there was like 55 single-spaced pages of all of the data that they
forced the State of Georgia to come up with. And even in the end of having them produce all that data, Georgia still couldn't get pre-clearance from the career people.

The process as it turns out, we now know, is somewhat corrupt there, but I think the Texas bill could very well suffer the same effects, not to mention all the time, of course, the State is taking to enact the bill; and then, of course, ultimately if it does get approved, to defend it in court for the inevitable legal challenge that will follow; and then, of course, administering and implementing the bill at the local level, it requires extensive training of local Election Officials to ensure that they know how to administer a very complicated set of identification provisions.

SEN. ZAFFIRINI: And that is on Page 3 of your written testimony. You wrote "though implementation of a photo ID bill will cost the State of Texas millions of dollars to defend the measure before the Department of Justice and in federal courts, and then to implement and administer it if ever approved." What do you think it would cost the State to defend this lawsuit?

MR. HEBERT: Well, to defend the lawsuit
if one is challenged and assuming the bill is enacted exactly as it appears in the bill pending before you, you know, to bring such a lawsuit and to challenge it, I can tell you on the plaintiff's side costs a quarter of a million dollars, at least on the plaintiff's side. I suspect the defendants usually spend more. So I would say, you know -- and it also depends whether there's an appeal, which usually there is. The more appeals there are, the more it costs. So usually litigation of this nature costs like, you know, probably half a million dollars is what -- is what the bill is.

SEN. ZAFFIRINI: Okay. Thank you. On Page 4 of your written testimony, you write that "There is considerable evidence, however, that enacting a Voter Photo ID bill will create a series of barriers making it harder for senior citizens, younger voters, poor people, people of color, and women in general to exercise their right to vote." Precisely what barriers are you talking about?

MR. HEBERT: Well, as Ms. Wang testified earlier, you and I may have IDs in our pockets, in our purses, but poor people don't oftentimes have those. And the burdens and barriers that they face are that they have -- if they don't have a photo ID now, and we
now know that there are thousands of Texans who vote and don't have a photo ID, that they're going to now presumably have to get one or make sure that they carry around those two other methods of identification with them. So that's -- you know, we're putting up -- we're putting up conditions on people exercising the fundamental right to vote. We're putting the burden on them to do more than just show up at the polls and vote.

You know, I heard earlier, for example, I think it was Sen. Fraser say, you know, to Sen. Davis, you know, when Wendy Davis goes the polls and votes, I want to make sure that, you know, it is Wendy Davis. And the fact is that we don't really have any examples right now of where somebody is showing up pretending to be Wendy Davis who is not Wendy Davis.

And so when you don't have a lot of those situations happening, forcing people to have a photo ID when it really isn't going to accomplish -- the kind of alleged fraud that exists, it really, I think, ends up putting people in a burdensome situation where they have to then go out and do something to get the right documentation.

And I think that -- you know, in
Georgia, I mean, there were -- I believe I saw a statistic in the Houston Chronicle this morning that there were roughly -- I think it was like a little over a thousand, I think it was 1100 voters who had to vote a provisional ballot in Georgia in 2008 because they didn't have the requisite photo ID. And of that number, I believe only 300 came back after the election and produced within 48 hours the necessary documentation.

Once the election is over, there's not as much incentive for people to come back and do whatever it is they need to do to validate their vote.

SEN. ZAFFIRINI: Thank you. Isn't it interesting that every minority member of the Texas Senate, every Hispanic and the two African-Americans, oppose the effort to re-redistrict, as I'd like to call it, and today every minority member of the Texas Senate, the two African-Americans and every Hispanic-American in the Texas Senate, oppose this bill. Some coincidence, wouldn't you say?

MR. HEBERT: I would say not very coincidental at all actually. I think it's understandable given the ultimate impacts of what I see the two bills having.

SEN. ZAFFIRINI: Mr. Hebert, you heard
my question to Sen. Fraser asking him why he included documentation of a sex change as proof of identification. He said in response that he would punt to the House author of the bill considered in 2007. Can you explain to us why that language would be in the bill?

MR. HEBERT: No. I mean, it's -- you know, I don't really know about a lot of the documents on that list of things you can produce, why producing two of those documents is, you know, a reliable way of proving who you are. For example, we won't allow people now, if this bill goes into effect, to use their voter ID card, their voter registration card, when they show up even if their name is on the books and their card matches that name, but we'll allow them to use a court record from a sex change operation and a library card to vote.

Now, you know, the last time I checked a library card to me doesn't seem to be as reliable as a government-issued voter registration card. So, you know, there's some real questionable things like that in the bill. Sen. Duncan -- I mean, Sen. Fraser would probably know why he put it in there, but for the life of me -- I haven't seen that in a bill before I have to say.
SEN. ZAFFIRINI: You haven't?

MR. HEBERT: No.

SEN. ZAFFIRINI: Thank you very much.

Thank you.

MR. HEBERT: Thank you.

SEN. DUNCAN: The Chair recognizes Sen. Gallegos.

SEN. GALLEGOS: Thank you, Mr. Chairman.

Gerry, let me ask you going back on redistricting and let's go to those states that have enacted -- well, let's go to the states that have enacted photo ID laws. Some of those states I understand were red states and all of a sudden they turned to blue. And it's my understanding that in a lot of those states the Latino population has surged. Is that -- is that your understanding?

MR. HEBERT: Well, the Latino population is surging in Georgia. I wouldn't describe Georgia as a state that's gone from red to blue.

SEN. GALLEGOS: I understand, but Indiana --

MR. HEBERT: I mean, I would -- Indiana is no longer completely controlled by Republicans, I don't think. So you have a situation there where maybe they've gone from red to purple trending, you
know, obviously in both of those states and in other states that have considered voter ID, and I believe it's now pending in the Utah legislature. Republicans have controlled and had a monopoly on the entire state government.

SEN. GALLEGOS: I guess what I'm trying to ask you is that in these states that are all of a sudden turning minority, what I would say minority, the Latino population coupled with the African-American population is outranking the Anglo population in those states, and it's showing in the -- at the ballot box especially during this last election. Would you -- would you agree?

MR. HEBERT: Well, certainly in Georgia the Latino population has been growing substantially in recent years. I'm not familiar that much with Indiana's demographics as I am with Georgia's.

SEN. GALLEGOS: Well, let's just stay with Indiana. You know, what we saw on CNN and some of the other figures that we're seeing is there was a tremendous increase in Latino votes in that state that turned it -- a red state into a blue state. And what I'm looking at here, Mr. Hebert, is that as these states grow all of a sudden -- for example, Indiana, as they grow into -- the population increased in the
Latino community. Like Indiana all of a sudden, they introduced and passed a voter ID bill, a photo -- a voter ID bill. And I guess what I'm concerned is that it's starting a pattern as where the Latino population is increasing, that all of a sudden you have proposed legislation on photo ID.

And now we're in Texas. Let me just give you some early numbers that we've gotten before we get into the census and before the Secretary of Commerce approves numbers. The State of Texas in the last ten years from 2000 to 2010 over 90 percent of the Texas growth will be minority. There's an indication of projected growth by 4 million in the last ten years out of -- for 4 million. Out of those 4 million, 3,158,077 Hispanic, 3 million -- over 3 million of that 4 million is Hispanic. Now -- and that's just projected. I think it's going to be higher after the Secretary of Commerce confirms the numbers.

Now, in Houston, we're looking at -- we're looking at a 1.1 -- in the last ten years -- in the last ten years a 1.1 million increase in ten years. Now, I'll tell you that the Secretary of Commerce has not confirmed those numbers. I believe that number will be 1.5 million.
So what I'm getting at here and I'd like you to answer is that all of a sudden we have a Latino explosion population here -- which by the way, we probably will get minimum three, probably maximum four congressional districts in Texas, one for sure in Houston and one for sure in Dallas. Now, the others -- I don't know where the others go, and probably additional Latino seats -- and I'm talking about these will be Latino seats, additional Latino seats in Houston, maybe two, and another extra Senate seat -- another Senate seat belt for Dallas, Latino, and probably four other State Rep seats in Houston, Latino.

So my concern is looking at these patterns all over the country with Latino explosion in population, and all of a sudden voter ID legislation in these areas, in these states, all of a sudden we have an explosion like this. Oh, yeah, we'll take the money from Washington after the census is taken and those educational monies, those transportation monies, education monies and healthcare monies, we'll take it, we'll take it. But all of a sudden, we have a voter ID bill that's on the table here before us. Because of this Latino explosion, they know that we're going to get these congressional districts, which is going
to empower Latinos.

And in redistricting -- and I was there with you. Troy Fraser was a co-chairman with me, and I saw what happened. I saw what happened, this little debate you had with Sen. Wentworth, I saw what happened. Who really lost were the Latinos. They were the ones that lost. They got cut up three ways in Dallas. They tried to cut us up in Houston, and they tried to cut us up in some other areas. What they do is put us in areas to elect whoever and cut us up and keep us -- and keep us separated. I saw that, and you saw that.

So what I'm asking you is that this pattern -- this pattern where Latino explosion population and all that is do you see a pattern of where that growth is? All of a sudden we want voter ID, voter ID to suppress -- that's my guess -- is to not only suppress our votes, but also try to suppress our empowerment.

MR. HEBERT: Well, let me say that there clearly is a surging Latino population in Texas and in other states that have seen a photo ID bill go into effect. And as I testified earlier, Sen. Gallegos, the fact is that most, if not all, of the groups that are going to be adversely affected -- and I'll single
out Latinos because that's your question -- that they are growing, and they are growing fast, and they are growing as a percentage of the Texas voting population, and they tend to skew Democratic, at least now. And so that to me explains the urgency that Republicans have in these states to enact a voter ID bill.

SEN. GALLEGOS: Mr. Hebert, what I'm -- I mean, what I meant and really wanted your opinion is that as this population grows and all this population is coming to Texas, which obviously enriches us with four more congressional seats, these other seats I spoke about, plus the money that the census gives us in those numbers -- what I'm saying is that Texas is benefiting from that population increase, not only in empowerment, but also in money.

And for some reason, like in Indiana where the Latino population is increasing, Denver and those other states that were red, now going blue, that legislation is proposed or being proposed in these states that all of a sudden are turning minority/majority.

My concern is that Texas will take the population increase, they'll take the empowerment, they'll take the four congressional districts, they'll
take the money from the census, yet they introduce a
bill to suppress the Latino and the minority
community. That's my concern on the pattern. So
wouldn't you agree with me or at least give me your
opinion that that's the type of pattern we're seeing?
Increase in Latino population? All of a sudden we've
got a suppression bill here. They might as well put
an amendment to suppress -- that this bill suppresses
all Latinos, the elderly and the African-Americans.
You might as well. That's what I see here. That's
the pattern I'm seeing. I just want your opinion.

MR. HEBERT: Well, my opinion is that
evoter ID bills, including the one in Texas, are a part
of a pattern of suppressing minority votes, and that's
what this bill will do in my opinion, and I've
testified to that effect. And I agree with you that
the surging Latino population here will likely justify
the creation of additional Latino seats when
redistricting comes around. And it goes counter to
the fact that you have the Latino population growing
as fast as it is as a proportion of the state, and at
the same time that they're growing and giving benefits
to the State of Texas, as you point out, that we end
up with a photo ID bill that actually will target them
and suppress a lot of people's voting rights.
SEN. GALLEGOS: Thank you for your opinion, Gerry. Thank you.

SEN. DUNCAN: The Chair recognizes Sen. Shapiro.

SEN. SHAPIRO: Thank you, Mr. President -- Mr. Chairman and Members. I have a couple of issues that I'd just like to visit with you about, Mr. Hebert. I do remember very closely the debate and the dialogue on redistricting and your role in that. And certainly one of the issues that still kind of gnaws at me is the idea -- and I just want a yes or a no answer. I don't want anything else. Did you take maps from the offices in this building during redistricting? Yes or no?

MR. HEBERT: Yes.

SEN. SHAPIRO: Okay. That's all I needed to hear. So you did take maps that were not yours out of this building?

MR. HEBERT: Now you're adding more facts. No, I did not take maps that were not mine. I took my maps, or maybe my client's maps maybe.

SEN. SHAPIRO: Did you get permission to take those maps, or did you just take them?

MR. HEBERT: The maps that I took I had permission to have in my possession.
SEN. SHAPIRO: And who gave you permission to take those maps?

MR. HEBERT: My clients.

SEN. SHAPIRO: Your clients gave you permission. Okay. So you did take maps?

MR. HEBERT: I did.

SEN. SHAPIRO: Okay. That's what I need to know.

The second question I have is completely different, and that is why do you believe the federal government has rules in place, laws in place, that actually say that when you go to an airport you must have a photo ID?

MR. HEBERT: For security purposes.

SEN. SHAPIRO: For security purposes.

And you testified earlier that someone came through -- I'm sorry I don't remember who you said -- came through, did not have to use their photo ID, went back, was integrated, came back out and went through as they did.

MR. HEBERT: Correct.

SEN. SHAPIRO: It's ironic because about a week ago I was going through, as we all do so often, and I happened to see a sign up right there at that isle as you -- before you give your ID. And the note
on the poster says "Why" -- with a question mark --
"Why do I have to show my ID? Identity matters. We
need to make sure your ID and your boarding pass
match." And it's signed Transportation Security
Administration.

These rules, these laws that are put in
place have exceptions, as you mentioned earlier, and
it seems to me the correlation between what this bill
is saying and what we are trying to do and what maybe
the federal government has done are very similar
because in essence it's the same methodology.

We have a law. We say we want you to
have a photo ID. You don't have it. In this
particular bill, it says here are the other options
that you can go through in order to qualify. I don't
think there's a whole lot of difference between the
two.

And I think that we're doing what you're
asked to do with a Sam's card. As we mentioned
earlier, I can't charge on my Cosco card unless my
picture is on it. Identity matters. I can't go to my
bank and cash a check or another bank without my photo
ID. Identity matters. I mean, you could go on and
on. The library books, identity matters.

And in this case, I think that's, in
fact, what we're doing. Do you agree that identity matters?

MR. HEBERT: I agree that identity matters, but I disagree that what you're doing in this bill is similar to what, say, the TSA is doing at the airport.

SEN. SHAPIRO: Okay. The methodology is the same. It may not be the same heightened awareness or the same difficulty with security, but we happen to believe that the integrity of the vote is just as important and just as secure.

MR. HEBERT: I see the procedures as being different at the airport than they are in voting.

SEN. SHAPIRO: And how -- and how is that?

MR. HEBERT: Well, for example, at the airport when you go through security and you don't have a picture ID, they pull you aside and they ask you questions. And if they're satisfied, you can get on, you get on.

SEN. SHAPIRO: That's what I just said.

MR. HEBERT: Well, the difference is that in Texas if you go to show up at the polls and you have a voter -- valid voter registration card
under this bill and that's all the information you have, you have to cast a provisional ballot, and that's not going to get counted. So the difference is that in one, you're getting on the plane, and in the example of the voter ID, you're not getting on the plane.

SEN. SHAPIRO: And you wouldn't have the opportunity then to say "Here is my valid information. Here is my check. Here is my electricity bill"? I mean, there's a whole litany of things that you could have with you at the same time that you went to go vote.

MR. HEBERT: Right, but if you go to the airport with nothing, you get to get on the plane if you can establish, through questions, that you're not a security risk. If you go to the polls with no ID except for your voter card, you're not going to be able to vote except for a provisional ballot, and there's no procedure in the bill for how to rectify that situation once your provisional ballot is counted. 70 percent of the provisional ballots never get counted.

SEN. SHAPIRO: Well, I think the issue here is identity matters, and I think what we're trying to do is just make sure that everybody's
identity matches who they are. That's not -- that is not out of line with about 25 other things that we do currently under laws or procedures or rules that exist throughout this country on lots of different issues. It was just ironic that you mentioned the airport because I just happen to have written that down while I was at the airport. Thank you.

MR. HEBERT: Thank you. You know, Sen. Shapiro, I own a restaurant, and we check IDs for people who we think are underage drinking. And when I went through the ABC training course, the alcoholic beverage, and they showed me fake IDs, I could not tell the difference between a valid driver's license and a fake one. So I agree identity matters, but it's often very difficult to base that decision on a photo ID, including a driver's license.

SEN. DUNCAN: Mr. Hebert, there are no other Members in queue to question you. So you are free to leave.

MR. HEBERT: Thank you.

SEN. DUNCAN: Thank you.

Mr. Patrick, for what purpose -- Sen. Patrick?

SEN. PATRICK: I was going to ask Mr. Hebert a question, but I don't think (inaudible).
TESTIMONY BY THOMAS WHEELER

SEN. DUNCAN: Our next witness, Members, is Thomas Wheeler. Mr. Wheeler, you have written testimony that you've submitted. It will be Exhibit 28, and it will be entered into the record.

(Exhibit No. 28 marked and admitted)

SEN. DUNCAN: If you'll state your name and who you represent? You have ten minutes.

MR. WHEELER: Thank you, Mr. Chairman, Members of the Committee. My name is Tom Wheeler. I represent myself. I am the Chairman of the Indiana State Election Commission. I have held that position for the last five years.

The Indiana State Election Commission is a bipartisan Commission, it is made up of two Republicans and two Democrats, and as I mentioned I am the Chair of the Commission. We share responsibility for elections, campaign finance, candidate inquiries and related matters with the Indiana Secretary of State.

The document and the statement that has been introduced as Exhibit 28 is a statement prepared by the Indiana Secretary of State Todd Rokita, whose name is -- it probably won't be unfamiliar to you for those of you who have read the Crawford decision.
I'm not going to engage in a polemic here this evening. I know we're late at night, and a lot of people are still behind us queued up ready to speak. What I would like to do, though, is spend just a couple of minutes telling you in Indiana how we got to where we are and how well it has worked in Indiana.

I would not presume to lecture the legislators here from the great State of Texas about how that's going to work here. That's your job as elected officials. But what I can do is tell you how -- why we implemented what we did and how well it worked.

Let me take to you 2003, Lake County, Indiana, City of East Chicago. Lake County, a pretty industrial area just outside Chicago filled with steel mills and industrial area. The situation is a contested Democratic Primary race for the Mayor of East Chicago. Mr. Pabey, the Police Chief, is running against the long-time Mayor Mr. Pastrick.

Mr. Pastrick was actually filmed and documented in a documentary called The King of Steel Town. For those of you who are involved in the election-related issue, it's a fairly fascinating documentary about how to move forward with election fraud.

In this particular case, on election day, May 6, 2003, Jose Torres walked into the Roberto
Clemente Center in East Chicago. He signed his name. He cast a vote in this hotly contested Democratic Primary battle for Mayor. In fact, he was one of four people, four family members from the same address who also voted in that election.

The problem, Mr. Torres died on December 26, 1997 in the Chicago Hospital. Indeed his family had moved out of East Chicago in 1998, yet they kept voting, religiously going to the polls and voting up to 2003. Interesting enough, Mayor Pastrick, the individual who was running as Incumbent Mayor, was actually a funeral home owner where Mr. Torres and many other voters in East Chicago had been prepared for burial.

The issue in this case, this was a hotly contested election. It was in a Democratic Primary. Very frankly, the Republicans had no idea that there was any fraud going on. This was whistle blowing between two Democratic candidates.

Mr. Pastrick, Mayor Pastrick, lost on election day by 199 votes. He challenged that loss. He alleged wide spread and systemic fraud by Mr. Pabey. Mr. Pabey alleged the same by him. This went to the Indiana Supreme Court. The Indiana Supreme Court found, and I quote, "There was an
occurrence of a deliberate series of actions that perverted the voting process and compromised the integrity and results of the election. In view of the uncontested factual findings of the trial court, the contestant established that a deliberate series of actions occurred, making it impossible to determine the candidate who received the highest number of legal votes."

When our Supreme Court said to us the fraud was so bad -- "We didn't just have dead people voting. The fraud was so bad that we can't even figure out who won this election, we're going to do it over," that caught the attention of the people of the State of Indiana and the General Assembly.

The second factor that caused us to look at our -- look at photo ID as an option was the fact that in Indiana we learned -- and this is set forth in the statement of Secretary Rokita -- we learned that voter registration rates in many of our counties exceeded 100 percent of the estimated voting eligible population. It was opined during the Pabey/Pastrick matter that these excessive voter registration rates encouraged precisely the kind of fraud that we saw during the Pabey/Pastrick election and the subsequent litigation.
Taking those two together, the Indiana General Assembly made a determination based upon the concerns about outright fraud, clearly what the Indiana Supreme Court had found in our case, that there was a need to instill voter confidence in the integrity of our election process and in the manner in which we conducted that election process particularly with respect to the in-person voting.

As a consequence, the Indiana General Assembly adopted what is the nation's most restrictive photo ID law. I would note that it's far more restrictive than many of the provisions that you have. For example, we don't have an opt-out provision where an individual can bring two forms of various different pieces of ID, including as I believe one of the Senators referred to, a court document related to a gender change. We don't have any of those. Basically you have to -- you have to come forward with a state-issued ID that displays the voter's photo and expiration date and the voter's name.

Now, if I might, stepping forward, recognizing my limited time, you've spent some time talking about -- and I believe Mr. Von Spakovsky discussed the University of Missouri study. What have we learned over the course of this? We've had now
three elections in which we've done photo ID, and what
we've learned is that there haven't been any problems.
The Secretary of State in his notation in the 2008
election, for example, received 1300 calls, complaints
from voters. Two dealt with photo ID. It's not a
situation where we're having massive problems.

The case that went to Crawford -- the
Crawford case, the ACLU and the various litigants,
including the Indiana Democratic party, referred to a
apocalyptic disenfranchisement of voters. The simple
fact is that hasn't happened in Indiana. It just
hasn't happened.

Now, with respect to the impact of this
on minority voters, we do know from the University of
Missouri study that Indiana voter registration and
Indiana turnout has increased rather dramatically.
Indeed attached to Secretary Rokita's statement, the
2004 General Election, 58 percent; 2008 General
Election, 62 percent. Now, I've heard some of the
Senators say "Well, that was because Barack Obama was
on the ticket."

The key factor -- and this is what the
University of Missouri report looked at was that 2002,
which was an off-year election, pre-Barack Obama,
which was nonphoto ID, our turnout was 34 percent.
The 2006 General Election, again pre-Barack Obama, a comparable off-year election, turnout was 40 percent. We went up 6 percent after implementing photo ID. That certainly wasn't the kind of disenfranchisement that was predicted, the apocalyptic prediction of disenfranchisement. Indeed we had a better voter turnout. I would suggest that that's counter to most of the states within the union.

Now, what happened there? I don't know what the answer is. I mean, there's been speculation, and there's been discussion and studies that talk about voter confidence.

What I can tell you and one of the most interesting things is the conclusion in the University of Missouri report, that, in fact, photo ID actually benefits Democrat -- traditional Democratic voters, minorities and otherwise. And one of the interesting parts that has not been referenced in this -- and it's in this report at -- under Section 4. They refer to the fact that on the other hand, the fact that there were no Democratic candidates in the 2006 Senate race might have led to a lower turnout than otherwise. In fact, my examination of historical Senate election data does indeed suggest that state voter turnout tends to be lower when there's an uncompetitive Senate
election at the top of the state ticket, all else constant. Assuming that this phenomenon occurred in 2006 in Indiana, then the photo ID likely led to an even greater increase in the voter turnout than the 2 percent observed in the raw data.

So the University of Missouri study said we saw 2 percent because there was -- and in 2006 very frankly Democrats really didn't run anybody on a statewide thing, yet the Democratic voter turnout went up. Well, it doesn't sound like photo ID has pushed Democratic turnout down, at least based upon the University of Missouri study which was focused purely upon Indiana.

Now, I'm not going to make predictions about what's going to happen in Texas. That's your responsibility to take this information and figure out if it works for Texas, but I can tell you that with respect to us it's worked pretty well.

And let me tell you the other thing that photo ID does, and this is the most significant thing that photo ID did in Indiana. You guys have spent the last 14 or so hours -- we've got Republicans pointing at Democrats and saying "Voter fraud." We've got Democrats pointing at Republicans and saying "Voter suppression."
Well, what photo ID has done in Indiana, it's taken that argument off the table. We've been unable to engage in election reform, and we in Indiana weren't able to do that for years because we just pointed at each other that way. Photo ID brought confidence to the parties, to the Republicans, to the Democrats, to allow us to engage in meaningful election reform. A, we were allowed -- we began purging our voter rolls. B, we went to satellite voting. We went to early voting. We've got no absentee balloting. I mean, we've been able to do that because photo ID built a trust level between our legislators to allow us to engage in other election reforms and needed election reforms. And I would suggest to you that's probably the most valuable part of photo ID is it allows you to get past the finger pointing you've been doing for the last 14 hours of voter suppression versus voter fraud. It gets you past that and allows you to engage in meaningful election reform.

I see that my time is up. I'd be happy to answer any questions.

QUESTIONS FROM SENATE FLOOR

SEN. WENTWORTH: Thank you. The Chair recognizes Sen. Whitmire.
SEN. WHITMIRE: Mr. Wheeler?

MR. WHEELER: Yes, sir?

SEN. WHITMIRE: Thank you for appearing. I was curious listening to your describing what instigated your program in Indiana. You were talking about this massive fraud that the Supreme Court said they couldn't even determine who the winner was. Could you describe the massive fraud that was so prevalent?

MR. WHEELER: The massive fraud as described by this?

SEN. WHITMIRE: Yeah. You went through this long scenario about an election that was settled by a hundred votes, and it went to the Supreme Court, and the Supreme Court said it was so bad they just really couldn't hardly tell who won. What are the facts of that massive fraud? I'm trying to see -- I've never heard of anything like that in Texas. I'm trying to appreciate what you were facing.

MR. WHEELER: Absolutely. In the Pabey case, we saw fraud in two areas: We saw some in-person fraud, and we saw a lot of absentee fraud. What they did is they used our bloated voter registration list to engage in both absentee ballot fraud and direct in-person voting, according to the
record that was in -- before the Indiana Supreme Court, which was --

SEN. WHITMIRE: Where -- do you-all have -- do you-all have laws against voter fraud?

MR. WHEELER: Absolutely we do.

SEN. WHITMIRE: Was anyone prosecuted?

MR. WHEELER: Not that I'm aware of, Senator.

SEN. WHITMIRE: Why not?

MR. WHEELER: Well, I believe the record showed that a gentleman by the name of Bernard Carter was the Lake County Prosecutor at the time. According to the records in the case, he owned several of the apartment buildings that were vacant but were used as home addresses for fraudulent voters. Now, I don't believe that Mr. Carter, in fact, was ever implicated in that, but I do believe that a lot of those fraudulent addresses did take place at --

SEN. WHITMIRE: Is it fair to say you-all have pretty laxed prosecution of criminal acts?

MR. WHEELER: I'd say it's very fair that there's laxed prosecution of voter fraud, absolutely.

SEN. WHITMIRE: Well, would you -- have
you learned -- been in the state long enough to know
that we don't tolerate it? And if you could show us
instances of fraud -- do you know of any fraud that's
been alleged in the State of Texas?

MR. WHEELER: I believe there's a

SEN. WHITMIRE: Do you know in that

instance was someone prosecuted?

MR. WHEELER: No, sir, I don't.

SEN. WHITMIRE: Well, it makes a big
difference if you're trying to fix something and if
you can discover the fraud and you don't prosecute it,
I think you've got a criminal justice problem, which
we don't have in the State of Texas.

Do you have a significant bilingual
speaking population in Indiana?

MR. WHEELER: We have a 5 percent
Hispanic population.

SEN. WHITMIRE: Are you familiar with
our numbers in the State of Texas?

MR. WHEELER: Yes. If you'll give me
just a moment.

SEN. WHITMIRE: Well, let me just help
you. Would you not agree that Texas is much more
diverse and has many more Spanish-speaking residents than you'd find in Indiana?

MR. WHEELER: I'm told 36 percent.

SEN. WHITMIRE: What about the cost of introducing your ID program in Indiana, what did you approximately spend?

MR. WHEELER: That's an excellent point, and that is, if you'll look at Secretary Rokita's statement -- I don't know if you happen to have it in front of you.

SEN. WHITMIRE: Yeah, I've read it.

MR. WHEELER: We spent about 1.25 million in HAVA Funds, which were federally provided funds. So we were lucky enough not to have to use our own state funds. I have no idea whether you have HAVA Funds that are available for this particular use, but the --

SEN. WHITMIRE: Well, we've been promised. Are you familiar with how they intend to fund the plan that you're here endorsing?

MR. WHEELER: I have no idea.

SEN. WHITMIRE: Well, it's pretty much a promise by Senator Williams that he would work with us to get those funds and that we've got some spots, but we haven't scheduled those spots, nor do we know the
amount. Do you think that would be significant?

MR. WHEELER: I think it's significant to make those expenditures because I think it makes it work. If you'll look at Indiana, what you heard again and again earlier that Indiana was special because we had 99 percent of people that had photo IDs, and I'd suggest it's even higher than that, and that's specifically because of this outreach.

SEN. WHITMIRE: One last thing that you've got my attention on at this late hour. You keep being so impressed with the turnout in 2008.

MR. WHEELER: I think I mentioned --

(Simultaneous discussion)

SEN. WHITMIRE: Don't you think the 2004 -- and I was reading the Secretary of State's comparison about the Presidential Election in 2004, particularly the Democratic Primary. Surely would you not agree with me that's not apples and apples comparing turnout and the dynamics and the reasons for the 2004 election versus the 2008 when you had such a contested Presidential Primary?

MR. WHEELER: Let me tell you the most amazing thing about the 2008 race. If you buy into the argument that photo ID in Indiana was designed to suppress African-American and Hispanic voters and
typical Democratic voters, that's the first year in
the last 40 years that Indiana went Democratic in the
Presidential Election.

SEN. WHITMIRE: Well, probably because
of the state -- wouldn't you agree that your economy,
your unemployment and the elements that were a part of
that campaign caused that turnout and also for sure
the selection and opportunity to vote for the --
whether it be Mrs. Clinton or Obama or others? I
mean, everywhere in the country they were experiencing
huge additional turnouts. And, in fact, I will turn
and ask you, how do you know it wouldn't have been
greater had you not had the voter ID?

MR. WHEELER: I'll tell you why I know
that, because the governor of the State of Indiana won
by almost 20 points, Republican governor. Every
statewide --

SEN. WHITMIRE: No, we're talking
about -- you're talking about the General Election.
I'm talking about -- I'm talking about the Primary.
You like to point out your great increase in numbers
in 2008. How do you know it wouldn't have been
greater if you had not had the voter ID?

MR. WHEELER: I have no idea. What I
will tell you --
SEN. WHITMIRE: You have no idea.

Repeat that for me. You sit up there and say you had an outstanding turnout.

MR. WHEELER: Can I finish my question -- my answer?

SEN. DUNCAN: Hold on a minute, sir.

You're talking over each other, and the court reporter can't get a record. Senator, if you-all could exchange questions and answers?

SEN. WHITMIRE: I'm sorry. Is it not true you have no way of knowing whether you would have had a greater turnout if you had not had the voter ID in the Democratic Primary in 2008?

MR. WHEELER: In the Democratic Primary?

SEN. WHITMIRE: Yeah.

MR. WHEELER: We had 73 percent Democratic turnout in the Primary.

SEN. WHITMIRE: And I think I -- and you probably know the reason because of the opportunity to vote for those outstanding candidates. It was a very contested Presidential Democratic Primary much more so than the 2004 experience, but you keep pointing to that as such a success for the voter ID. And I would just ask you, how do you know it would not have been greater had you not had the obstacles of a voter ID?
MR. WHEELER: How do I know it wouldn't have been less? I mean, the University of Missouri study tells me that but for photo ID it should have been less.

SEN. WHITMIRE: Do you-all have --

MR. WHEELER: If I can answer -- answer the question that you had asked? What I do know is that in 2008 in the General Election we had massive turnout.

SEN. WHITMIRE: Yeah.

MR. WHEELER: Barack Obama won in Indiana, the first Democrat in the last 40 years. We also had -- and you asked me if I could control for economic conditions. You said, "Well, couldn't it have been bad economic conditions that caused that?"

SEN. WHITMIRE: Sure.

MR. WHEELER: And the answer is no. The governor of the State of Indiana won re-election by 20 points. Every Republican officeholder won in Indiana other than Barack Obama. So what I would answer your question is no, it was not economic conditions.

SEN. WHITMIRE: Without -- excuse me. Without knowing the circumstances of the contested races and the popularity of your governor who may have, you know, adopted Democratic policies for all 1
know --

MR. WHEELER: This was Mitch Daniels.

He did --

SEN. WHITMIRE: You know, I do not know the circumstances. All I'm simply saying is everywhere in the country, Texas included, we experienced greater turnout because of the shape of the country, the opportunity to vote for the popular candidates on both sides. So the fact that you -- the fact that you're trying to attribute voter ID to allowing a greater turnout, we experienced it in Texas, and we don't have voter ID.

MR. WHEELER: Senator, I did not --

SEN. WHITMIRE: One last thing I want to ask you about. Did you say your reforms did away with absentee voting, your voters?

MR. WHEELER: No. We were able to get -- we went to no-fault absentee voting.

SEN. WHITMIRE: You went to what?

MR. WHEELER: We have no-fault absentee voting, which is to say that basically all you have to do is say "I'm going to be out on election day," and you may go vote.

SEN. WHITMIRE: We have that. Do you have mail-in early voting?
MR. WHEELER: We do.

SEN. WHITMIRE: Do you ever experience any alleged fraud in that area?

MR. WHEELER: I think in Pabey vs. Pastrick there's documentation of it.

SEN. WHITMIRE: Why didn't you address that?

MR. WHEELER: Because there was a political compromise.

SEN. WHITMIRE: Oh, really? You-all do that, too?

MR. WHEELER: Occasionally.

SEN. WHITMIRE: All right. Thank you for being here.

MR. WHEELER: Thank you, Senator.

SEN. DUNCAN: The Chair recognizes Sen. Watson.

SEN. WATSON: I appreciate you being here. Senator Whitmire covered most of what I wanted to ask, but I just want to make sure I'm clear. You came here to give some very specific examples about Indiana, but you don't have any statistical analysis or data about the effects that Senate Bill -- proposed Senate Bill 362 would have on Texas, African-Americans in Texas or Hispanics in Texas or anybody else in
Texas, do you?

MR. WHEELER: Absolutely not. I served as an elected official prior to resigning to taking this Commission job. That's your job. That's the job of you guys. I wouldn't presume to tell you that.

SEN. WATSON: I appreciate you being here. Thank you very much.

MR. WHEELER: Thank you.

SEN. DUNCAN: Thank you, Mr. Wheeler.

There are no other members queued up to ask questions.

MR. WHEELER: Thank you.

SEN. DUNCAN: We appreciate your appearance, and welcome to Texas.

TESTIMONY BY CHANDLER DAVIDSON

SEN. DUNCAN: The next witness we'll have is Chandler Davidson. Mr. Davidson, as you're approaching, you have submitted written testimony. That will be Exhibit 29.

(Exhibit No. 29 marked and admitted)

SEN. DUNCAN: And you are -- if you will, state your name and who you represent, and you have ten minutes.

MR. DAVIDSON: Honorable Senators, I'm privileged to be here at your invitation. Thank you.

Between 1966 and 2003, I taught politics and sociology.
at Rice University and specialized in voting behavior and voting rights.

When I joined the Rice University faculty in 1966, two persons I made a point of meeting because of my research interests both had offices on Lyons Avenue in Houston's Fifth Ward. One was a charming, if rather formidable young woman, who had just been nominated for a seat in this body and with whom I enjoyed a friendship that lasted the rest of her life, Barbara Jordan. I see her smiling face over there. She had twice previously failed to win nomination for a House seat in a heavily white district in which racially polarized voting prevailed. Her Senate district, however, was almost half black, and she was able to win.

The other person I met was a dentist, also a charming individual, Dr. Lonnie Smith, the named plaintiff in Smith v. Allright, the case Thurgood Marshall successfully argued before the Supreme Court in 1944 invalidating the Texas White Primary. Ladies and gentlemen, I feel their presence today in this room.

Given the long history of legally sanctioned disfranchisement of large and disparate groups of citizens from the founding of the Republic
to the recent past, Senate Bill 362 raises important questions to scholars of voting rights. Indeed the bill brings to mind events during the half century following the Civil War when the language of progressive reform in Texas cloaked the disfranchisement of blacks, Latinos and poor whites, those most likely to vote for Republican or populist candidates. Actually adopted for partisan and racially discriminatory purpose, these laws were often presented as high-minded attacks on fraud, efforts to purify the electorate that would only inconvenience vote sellers or the ignorant and shiftless.

The poll tax was one of the most notorious disfranchising mechanisms of its day. The current debate over Senate Bill 362 as well as similar bills in other states has led to claims that they are a modern day poll tax. This implies that the Texas bill, too, falls within the ignominious American tradition of disfranchising laws passed under the guise of good government reform.

Frederick Ogden, perhaps the foremost scholar of the poll tax, wrote in the 1950s, I quote, "While critics of legalized restrictions on Negro voting may find it hard to discover any high moral tone in such activities, these restrictions reflected
a movement for purifying the electoral process in
southern states."

Ogden quotes the editor of the
San Antonio Express writing in 1902, "By requiring a
poll tax receipt, secured six months previous to an
election, fraudulent elections can be prevented almost
entirely."

The most accessible photo ID required by
Bill 362 probably consists of the state's driver's
license. Obtaining one has been shown in other states
to be a good deal more difficult for some people than
it might seem at first glance. For example, at least
43,000 persons of voting age in Indiana are estimated
to have neither a driver's license or the other most
likely form of photo ID in that state. The number
of -- the number in Texas would probably be
significantly greater.

The demographic characteristics of
persons lacking the requisite ID are suggested by a
November 2006 telephone survey of 987 randomly
selected voting-age American citizens by the
independent Opinion Research Corporation conducted for
the Brennan Center for Justice at NYU School of Law.
11 percent did not have valid government-issued photo
ID, while 18 percent of citizens 65 years of age or
older lacked it, as did 25 percent of African-Americans. The latter two demographic groups, the elderly and African-Americans, are more likely to self-identify as Democrats, African-Americans disproportionately so. There is no reason to believe that this national pattern is much different than that in Texas.

Have supporters of Senate Bill 362 demonstrated that there is a significant degree of fraud of the kind -- that the bill is fashioned to prevent? Others today and tonight have described Attorney General Abbott's unsuccessful effort to uncover personal impersonation fraud.

Suffice it to say that Senate Bill 362 is designed solely to prevent voter impersonation at the polls. In both 2005 and 2007 Republicans in the legislature introduced similar photo ID bills. In 2007, according to a newspaper reporter, Republicans liked the voter ID bill because they believe it will weaken Democrats, but can argue that it is a reasonable requirement because it would prevent vote fraud.

Not all Republicans, however, shared the belief that it would curtail fraud. Royal Masset, Former Political Director of the Texas Republican
Party, was one. He told a reporter that among his fellow Republicans it was an article of religious faith that voter fraud is causing us to lose elections. Masset did not share that faith. He did believe, however -- he told the reporter, that requiring photo IDs could cause enough of a dropoff in legitimate Democratic voting to add 3 percent to the Republicans vote.

When Mr. Abbott's failure to find almost any voter impersonation fraud is placed alongside the fact that the previous legislative votes for a Texas photo ID bill were almost entirely along partisan lines and that the people most likely to be disfranchised by it would be Democratic voters, particularly African-Americans and Latinos as well as lower income, elderly and disabled citizens, Texas Senate Bill 362 appears to fit comfortably within the long and sad history of those in positions of power disfranchising the above populations for partisan gain.

Moreover, today's Republicans' attempt at justifications of the bill with claims of voter fraud are at least as dubious as those which attempted to justify the now and unconstitutional poll tax at the beginning of the 20th century.