of the AARP who you stand up here purporting to 
represent? What is their opinion on the photo ID 
bill? How do you know and how do you get -- how does 
your organization determine that you have the right to 
stand up and speak for them, some of whom are on this 
floor right now and I think have absolutely no idea 
that the AARP has the position that you've espoused?

MR. KOHRMAN: Well, you know, Senator, 
we have an even more quick turnaround accountability 
system than even elected representatives who stand for 
election every two or four or six years, which is that 
our members can fire us at any time, and so --

SEN. OGDEN: Okay. So would it be 
correct to say that there is nothing specific in your 
organization rules that sets out a specific case that 
this is the position of the AARP, and it's based on a 
survey where the majority of the members or it's based 
on the majority of members expressing their opinion to 
you and you're just relaying what the majority told 
you?

MR. KOHRMAN: We have a several hundred 
page policy book.

SEN. OGDEN: Okay.

MR. KOHRMAN: And I quoted to you the 
two fundamental propositions in that book about
election restrictions, and they are that voting should be fair, easy and accessible. And that in regard to the -- I'm sorry. The second one is in regard to issues of fraud that it's an important priority, but never should be stressed to the exclusion of the principle of expanding access to the ballot.

SEN. OGDEN: Okay. I understand that general statement, but I'm going to say that the many thousand people in my district who are members of the AARP, I believe that they do not support this position, and I believe that you do not have any evidence to counter my statement.

MR. KOHRMAN: Well, we also have a process that is a grassroots process.

SEN. OGDEN: Okay.

MR. KOHRMAN: Every year we go state by state, we go policy by policy and we go soup to nuts ground up, and all of our policies are subject to review, analysis by all of our members.

SEN. OGDEN: All right.

MR. KOHRMAN: And, Senator, I have had to answer innumerable criticisms, complaints and questions from individual members over the seven years I've been with the organization about sentences, words, paragraphs in that policy book.
SEN. OGDEN: Okay. Mr. Kohrman, I understand and think I made my point, and I hope I've given you a fair opportunity to respond.

MR. KOHRMAN: No, no, I --

SEN. OGDEN: Let me ask, how do you know who your members are?

MR. KOHRMAN: Well, I'm not quite sure. I see someone holding up a card up in the gallery, so I guess that's one way.

SEN. OGDEN: How do you --

MR. KOHRMAN: I'm not sure I get your drift. I'm not trying to be evasive.

SEN. OGDEN: How do you sign up for the AARP? How do you even know who is eligible to be in the AARP?

MR. KOHRMAN: Well, you know, that's an interesting mystery that the membership people handle, and I'm not trying to be cute. I don't know. I assume we gather all kinds of information about individuals through various mailing lists and send out lots and lots of direct mail. But we know who our members are because we spend a lot of effort keeping track of them, and we know where they live and what their interests are.

SEN. OGDEN: Is it possible that --
it possible that you use forms of identification to
identify your members, and is it possible that you
send out membership cards that identify your members?

MR. KOHRMAN: Sure, sure.

SEN. OGDEN: And do you have a
reasonable level of confidence that these people are
who they say they are?

MR. KOHRMAN: Sure.

SEN. OGDEN: Okay. So --

MR. KOHRMAN: Can I just add there,
Senator? We have no reason to believe that people
would impersonate someone else in taking an AARP
membership, and I think that principle is the same one
applicable here.

SEN. OGDEN: I understand that, but what
I'm saying is you know who your members are because
you require some form of identification in order to
sign them up.

MR. KOHRMAN: No, we don't.

SEN. OGDEN: That identification is
either through some sort of list that you've obtained
identifying people who are over a certain age; that
identification is associated with a form they fill out
to sign; that identification is associated with a
membership card; that identification is associated
with maybe some commercial transaction; I mean, identification is involved throughout this process. So my question is, can you think of a single member in the AARP that could not meet the requirements in this bill, a single one? And tell me who that is.

MR. KOHRMAN: Well, I would point --

SEN. OGDEN: Give us one person who could not -- could not meet the requirements of this bill if they are members of the AARP and have an identification card that says "I'm a card-carrying member of the AARP." Give me one person who couldn't meet the requirements in this bill.

MR. KOHRMAN: Well, I tell you that I think that's a good question, and I regret not checking all the people mentioned in my testimony so that I could answer that question.

SEN. OGDEN: Well, I'm going to suggest to you that there's not a single member in the AARP who could not meet the requirements in this bill.

MR. KOHRMAN: Well, Senator, that may be right, but I doubt it, and I think you have no basis for that statement.

SEN. OGDEN: Yes, I do.

MR. KOHRMAN: And if there is a basis for that statement, it's that frankly our members are
among the most energetic, active seniors there are in
the country. They are also more on average well off
than your typical senior. They're probably more
healthy than your typical senior, and they don't have
a lot of the challenges.

One of the things that AARP has done in
the last two years is to put on our priority list in
the AARP Foundation where all the legal advocates are
like me, a new focus on low-income seniors, and the
focus is on people who we're not likely to get as
members because for them maybe even $12 a year is more
than they want to contribute.

SEN. OGDEN: Well, okay, and I
understand that we're talking about all the voters,
but as a representative of the AARP, I assume you're
speaking on behalf of your membership using a very
vague standard of what it is that they support and not
support, and that there is no evidence in your
testimony or in my questions to suggest that there's a
single member in the AARP who couldn't meet the
requirements of this bill. And so I don't have
anything else to add.

MR. KOHRMAN: Well, I'm not sure what
the point is, Senator. It seems to me --

SEN. OGDEN: The point is that this
testimony is -- well, I don't have any more to add.

MR. KOHRMAN: Well, let me just respond.

It seems to me when you come to fundamental rights, the burden is on the proponents of this bill to justify it. If we were talking about regulating advertising or some other interest that is not fundamental to what it is to be an American, I would take on the burden and acknowledge that it's, you know, my burden to perhaps justify in excruciating detail the names and addresses of people who couldn't be covered by your bill. But it seems to me the shoe is on the other foot when it comes to voting.

And to say that when there is no evidence of harm, but it is speculative harm that frankly -- another thing that concerns us, Senator, is that proponents of these bills are creating their own problem to be solved by complaining and suggesting to our members and other seniors and voters all over the country that there is a fraud problem that cannot be demonstrated, that then needs to be solved by forcing voters to jump through additional hoops. That seems to us is an unnecessary --

SEN. OGDEN: Okay.

MR. KOHRMAN: -- an unnecessary and unfortunate misallocation of time.
SEN. OGDEN: All right. Mr. Kohrman, and I would suggest to you that the hoops that you've got to jump through to become a member of the AARP are more onerous than the hoops you've got to jump through in order to vote under this bill. And I would also suggest to you that you're perfectly within your rights to testify as an individual, but I think your testimony representing the AARP lacks merit and substance.

MR. KOHRMAN: Well, we're very comfortable with our position on this bill, and we feel very confident that our members believe in an expansion of political participation rather than measures likely to discourage it and reduce it.

SEN. DUNCAN: Thank you, Sen. Ogden.

SEN. PATRICK: Thank you, Mr. Chairman.

I've heard a number of witnesses continue to say something that I believe our last witness shows it is not correct. You said there's no evidence of fraudulent voting, and our last witness from Harris County clearly showed there was fraudulent voting there. So would you like to correct that statement?

MR. KOHRMAN: On the contrary, he showed no evidence whatsoever of fraudulent voting. What he
showed was evidence of fraudulent registrations, and those are two very different things.

Moreover, what's so stunning about this whole debate is that there are innumerable forms of electoral malfeasants, but this kind of law gets at none of those. The only thing it does, as Ms. Wang said at the very beginning of this long debate, the only thing that this bill can prevent is in-person impersonation, and the notion that people --

SEN. PATRICK: Let me -- excuse me. I didn't ask that question. The question was our last witness clearly indicated, proved that people voted on behalf of dead people. So don't sit there and say there's been no evidence.

Secondly, in terms of AARP, did I clearly hear you say to Sen. Ogden that AARP members are more affluent, more well informed, very active, and basically what I heard you say was AARP members wouldn't be impacted by this bill. Is that correct?

MR. KOHRMAN: Well, let me answer --

SEN. PATRICK: That's a yes or no. Is that correct?

MR. KOHRMAN: Well, you asked me two questions.

SEN. PATRICK: I'm asking you one
question now. Based on your testimony previously --

MR. KOHRMAN: Uh-huh.

SEN. PATRICK: -- you said that your concern was for those members that may not -- or those people who may not be -- can't afford $12 a month to be in AARP, that AARP members wouldn't be impacted. So is your testimony that AARP members won't be impacted? That's what you said a moment ago.

MR. KOHRMAN: They will be impacted in -- to a lesser degree on average than seniors generally and certainly --

SEN. PATRICK: How much is lesser, 5 percent?

MR. KOHRMAN: -- low-income seniors.

SEN. PATRICK: 5 percent? What's lesser, 99, 1 percent?

MR. KOHRMAN: There's no disputing that this is a small percentage of the overall electorate, and the question is whether the proponents of this bill care about the absolute number of people.

SEN. PATRICK: And do you have any proof of even a lesser percent? Can you present any evidence, solid evidence, that any member of AARP will be impacted by this bill? Do you have any evidence?

MR. KOHRMAN: Our surveys shows that
small percentages consistent with all the surveys --

SEN. PATRICK: Is there a name?

MR. KOHRMAN: -- have concerns that they
would not be able to provide --

SEN. PATRICK: Is there a name?

MR. KOHRMAN: -- the kind of ID that is
required in these laws.

SEN. PATRICK: So you don't have any
names. You just have this kind of general small
percentage.

So let me ask you this question: Have
you done a survey of Senate District 7 in Harris
County?

MR. KOHRMAN: Can I answer? Because my
answer was just given to me when it was not the answer
I would have given.

SEN. PATRICK: Let me -- let me ask
another question. Did you survey any one in Senate
District 7 in Harris County who is a member of AARP?

MR. KOHRMAN: Not as far as I know.

SEN. PATRICK: Okay. Would it shock you
if I told you that the majority of seniors in Senate
District 7 support voter ID?

MR. KOHRMAN: I would challenge you to
demonstrate that you've surveyed them and know who
those members are.

SEN. PATRICK: Oh, I can -- oh, I can assure you I meet with hundreds, thousands, I talk with them, I know my district, I'm very well connected to the people in my district. And the seniors of my district, many who are members of AARP, support this bill. Thank you.

MR. KOHRMAN: Okay. All I can --

SEN. PATRICK: I have no further questions. Thank you.

SEN. DUNCAN: Sen. Williams, you're recognized.

SEN. WILLIAMS: Thank you, Mr. Chairman. You know, I've just -- during this discussion I've just been on your Website here, and I've gone to the policy and research, and I went to election issues and scanned every article that you have on your Website here under that category, and there is not a single article in here about photo ID voting. And so I put that under the search, policy and research, and I came up with one article that says "the Supreme Court upholds the voter -- voting ID laws. The U.S. Supreme Court upheld an Indiana law despite acknowledging it burdens poor people." I mean, you've got one article on here that you have to really go to a lot of
I think it's so disingenuous for you to come here and say that you represent all the members of AARP when I have done surveys in my district -- you know, I've got 750,000 constituents just like every other member of the Senate does here -- and I find consistently across all age brackets and across all ethnic lines, they all support this measure. I just -- I don't see how you can sit here and assert this and offer no statistical proof or anything in writing that you've ever surveyed any of our districts. This is ridiculous. You are a political hack coming in here and asserting this stuff that you don't have any basis for whatsoever.

MR. KOHRMAN: Senator, I'd be happy to help you with your Internet search skills any time and provide you with a lengthy list of the Web links to the various articles on the various cases, but --

SEN. WILLIAMS: You know, I've just searched your Website.

MR. KOHRMAN: I understand, Senator, and obviously you have some limitations in your search skills because we have -- I've told you the number of cases on this issue that we have, and you haven't found them.
SEN. DUNCAN: Sir, I'm sorry, I think the question --

MR. KOHRMAN: Okay.

SEN. DUNCAN: -- there is no other members queued up, so you are excused. Thank you for your testimony.

MR. KOHRMAN: Thank you.

TESTIMONY BY COBY SHORTER

SEN. DUNCAN: The Chair calls Coby Shorter. Mr. Shorter, I think, has been listed as a resource witness.

MR. KOHRMAN: Actually, Mr. Chairman -- Mr. Chairman?

SEN. DUNCAN: Sir, you're not recognized at this point, at this time.

MR. KOHRMAN: I've been -- I've been criticized without a chance to respond by three Senators.

SEN. DUNCAN: You're out of order; you're out of order. You'll have to leave.

MR. KOHRMAN: Okay.

SEN. DUNCAN: Thank you.

MR. KOHRMAN: I was just going to request a chance to respond in writing.

SEN. DUNCAN: Mr. Shorter, you'll need
to state your name and the office that you're with, and you'll have ten minutes as the other witnesses, and then you'll be subject to questions at that time. Go ahead. Do you have any written materials?

MR. SHORTER: No, sir.

SEN. DUNCAN: Okay.

MR. SHORTER: Thank you, Mr. Chairman and Senators. I am Coby Shorter, the Deputy Secretary of State for the State of Texas, and it's a pleasure to be here with you this morning.

First of all, I just want to say on behalf of Secretary Andrade, she sends her regrets for not being here, and I have been invited here to be a resource to you on some of the issues that you are debating, and hopefully the information that I am able to provide through answering your questions will help you in your deliberations.

I only say this: It is our goal as the Secretary of State's Office, the chief elections office, to make sure that every election in Texas is fair, every election in Texas is credible and accessible to all the Texas voters. And our office recognizes the importance of protecting the integrity of elections and ensuring that all eligible Texans have the opportunity to participate in the Democratic
process.

So with that said, please know that whatever deliberations and whatever bills you pass related to elections, we look forward to working with you and helping you to -- helping you in terms of implementing the bills that you pass.

With that, I would ask that since I am a resource, that I'm here to answer questions. We also have, Mr. Chairman, our General Counsel John Sepehr here to answer questions as well, but we are open now to any questions we may -- you may have for us today, this morning.

QUESTIONS FROM SENATE FLOOR

SEN. DUNCAN: The Chair recognizes Sen. Fraser.

SEN. FRASER: Deputy Secretary Shorter, thank you for being here. We -- it doesn't escape us that you've been sitting over here since ten o'clock this morning being available to this body. And as someone that serves the state, we appreciate you being here.

The questions that I have today for you are -- I think I want some clarification, making sure that the bill that I'm laying out that I am understanding correctly the interpretation of someone
that fills out an application, sends it in, receives a registration card and then takes that registration card and attempts to vote with that.

MR. SHORTER: Yes, sir.

SEN. FRASER: And I guess the first question I would have is the election code is under Chapter 63 and, in fact, the start of that is Section 63.001, the Regular Procedure for Accepting a Voter. Do you happen to have that --

MR. SHORTER: Yes, sir, I do.

SEN. FRASER: -- that law in front of you? And I would ask you -- if possible I'd like to walk through and make sure I understand the Texas law and what provides for the ability for someone to vote.

Here in my hand I have the voter registration card that I believe that is issued. Is that correct? It is issued to a voter. It looks like it is mailed out, and this would be the card that I would use when I would walk into the --

MR. SHORTER: Senator, that does appear to be our voter registration card.

SEN. FRASER: And it looks like -- it says "Except as otherwise provided, acceptance of voters shall be conducted as provided" under this section. "(b) On offering to vote, a voter must
present the voter's voter registration certificate to
an election officer at the polling place." So it
appears to me that if I walk in a polling place and I
take this voting card and I show it to the person at
the polling place, the first thing they're going to do
is accept this card that I'm offering.

MR. SHORTER: That is correct, sir.

SEN. FRASER: Okay. "(c) On
presentation of a registration certificate, an
election officer shall determine whether the voter's
name is on the registration certificate is on the list
of registered voters for the precinct." So I'm
assuming that after I hand him the card, if I remember
correctly, they've got a list in front them, they look
and find my name on the list, they look at my address
and they determine am I voting in the right precinct.
I think -- is that what they're looking for?

MR. SHORTER: Yes, sir.

SEN. FRASER: Okay. "(d) If the voter's
name on the precinct list of registered voters, the
voter shall be accepted for voting."

MR. SHORTER: That is correct.

SEN. FRASER: Now, is that what happens?

MR. SHORTER: Yes, sir, that is the --
what it's going to say on that.
SEN. FRASER: Okay. I want to clarify.

On this card, there's several other things on the card. One of them is, it has date of birth. Now, is the person that I'm giving this to looking at that date of birth, and has it been reflected in state law that that's something they check?

MR. SHORTER: According to state law right now, as it is written now, date of birth is not something that is checked.

SEN. FRASER: On this card, it has an area for my sex. We've had a lot of fun today with the sex change argument, but on the card it says that there is a registration for someone's sex. My card says "male," and I put it there. Is that something when I hand this card to the registration person that they would be verifying on the card?

MR. SHORTER: They would not be verifying it under current law.

SEN. FRASER: Okay. So let me -- let me make sure I understand the way this works. I have a card in my possession. I walk in and I give this to the person. They look at the list, they determine I'm in the right precinct. If I'm on the list and I'm in the right precinct, they hand me my card back, and they hand me a ballot, and I go over and vote. Is
that correct?

MR. SHORTER: Yes, sir.

SEN. FRASER: Okay. Well, I'm a little confused about how -- what could happen because let me continue this questioning here. I live in Horseshoe Bay, Texas. It is a small community, a retirement community, which by the way, most of them are AARP members. And the retirement people there that still are going to vote, when they walk in, the people in the polling place, they know me as their Senator. And if I walked in and I brought my voting card and I put it in, they'd say "Senator, it's good to have you today," and I would register and I would vote and then I would walk back out to my car.

But what would happen after I voted that -- in my car I had my brother Steve's voter registration card, and I walked back into that polling place that I just left and I laid Steve Fraser's voting card down and said "I'm here to vote." Now, the registrar probably would say "Well, Senator, you were just here, and you just voted." And I said "No, I'm Steve Fraser. I'm his twin brother. I'd like to vote." What authorization under state law does that polling place person have to tell me that I am not authorized to vote?
MR. SHORTER: Under current state law, there is no authorization to prevent that polling person from --

SEN. FRASER: So if I present my brother's card and even though they know or they suspect -- greatly suspect that I am not Steve Fraser, do they have the authorization under state law to stop me from voting?

MR. SHORTER: I don't think -- based on my understanding of state law and based on my consultation with our staff, they don't have the authorization to stop you.

SEN. FRASER: Okay. Let me -- let me carry it a step further. Let's say that I'm not in Horseshoe Bay. I'm in Houston, Texas. And in Houston, Texas if I was voting, probably they wouldn't have any idea who I was. And I walked in the voting booth and I didn't have my card or my brother's card, I had my wife Linda's card, and I went in to vote. And my name -- Linda Fraser's name was on the list in the precinct. They would check and see if her name was there, and they would check the address, and I'm in the right place, would they hand me a ballot and allow me to vote? Is there anything under state law that they would check the person verifying the -- you
know, that I'm not Linda Fraser in that? Is there anything under state law that would cause them or allow them not to allow me to vote?

MR. SHORTER: Senator, under these provisions of the law as they are, there are no provisions that would prevent that.

SEN. FRASER: Okay. Let's carry it a step further. There was a case that was represented to me this week -- there have been a lot of these now that we've been working on this -- this happened in Plano. A poll worker in Plano had a lady came in, bright red hair, big blue hat, feathers on the hat, one of those people you would remember when they came in. She voted. An hour later she came back in with somebody else's registration card, went down to the next poll person and was registering to vote.

The person she just voted with went to the election judge and said "This person was just here. They just voted. She's trying to vote again," and the election judge told them "I'm sorry. We have nothing under state law to stop them. You have to allow them to vote." Now, is that -- under current law could that have happened?

MR. SHORTER: Under current law as it is written, that could have happened, yes, sir.
SEN. FRASER: Okay. Let's carry it a step further. Let's assume there's an unscrupulous person that has the address of someone that they know was a registered voter and that person has passed away. Let me back up and ask the question.

My understanding is that when someone dies that your office requests death records, and that you now have the ability to try to take people off the roll. Is that correct?

MR. SHORTER: Well, Senator, what happens on a weekly basis, the Bureau of Vital Statistics submits to our office their records on deceased individuals, and we forward that information to the counties for that person to be taken off the roll.

SEN. FRASER: How long does it take for that data to -- to have the person deceased till you get it and you get them taken off, what is the time lag?

MR. SHORTER: Senator, I don't know the exact timeline that it takes, but the challenge that we sometimes have is that the information that is forwarded to our office from vital statistics, there's a lag between the time that we get it and the time the individual sometimes actually has expired.
SEN. FRASER: I've been told it's six months. Is that the average time that it takes to remove them off the roll?

MR. SHORTER: We do have instances of knowing it has taken six months.

SEN. FRASER: Okay. If it took six months and if someone died and if someone sent in a letter of a change of address and said that person just died, asked for a new registration card to be sent to X address and they did that with every one that died during that period, and there were as many as 30 or 40 or 50 of these people and the same address -- request change that went to the same address, do you have the ability or does the County Clerk have the ability to catch that under our current system?

MR. SHORTER: If they all went to the same address?

SEN. FRASER: If someone sent in a change of address --

MR. SHORTER: Yes, sir.

SEN. FRASER: -- of a valid voter and said "Send me their registration card and send it to this address" --

MR. SHORTER: Yes, sir.
SEN. FRASER: -- and whether it was one or two or ten or thirty or fifty, that they change that address, if someone sends you in a change of address, would you likely send it to that address?

MR. SHORTER: Yes, sir, we would.

SEN. FRASER: So it's possible that someone could collect, could harvest multiple cards at this address. Hypothetically is it possible they could hand them out to random people that didn't belong to the card, and that person -- the random person could walk in with the fake card and give it to the person at the polling place and vote that card?

MR. SHORTER: Hypothetically, yes, Senator.

SEN. FRASER: Well, hypothetically if it could happen and someone could do it, we have to assume that somebody has thought about that, and that some of these people that we've heard on these stories of people that were dead that voted multiple times possibly that could have been what happened. Is that correct?

MR. SHORTER: Yes, sir.

SEN. FRASER: Okay. If Senate Bill 362 was in place and that person that stole that identification or stole the card or the Troy Fraser
that was voting Steve Fraser's card, if they had to
come in and show either a photo ID proving who they
were or they had other means of identification that
they would have to show, would that not give us a lot
better chance of identifying that that person is
fraudulently voting?

MR. SHORTER: Yes, sir, if you could
verify that.

SEN. FRASER: Okay. Well, let's change
this for a second. I have the -- your voter
registration card here in front of me. I know it
looks like it's got a lot of spaces for things to fill
out, but down at the bottom it's got a place to fill
in your driver's license number, and there's another
place that says your social security card number.

MR. SHORTER: Yes, sir.

SEN. FRASER: The data that I received
from you it looked like that because of motor voter
we're receiving about -- I think the number is
somewhere in the high 80s. You know, 75 to 80 percent
of people right now are using their driver's license
number. There is a smaller number, you know, 10,
15 percent uses a social security number, but there
were a number of people -- I think there were 3,700
people in Texas last year -- 37,000 people in Texas
last year that used neither. They said "I don't have a driver's license. I don't have a social security card," and they turned this in.

Now, if they turn this in to the Secretary of State or to the registrar in Houston, the guy that was just up, once they do that, would this be processed, and will they be issued -- even though they have no forms of identification, they don't give you a driver's license number or a social security card, all they gave you was just a blank card, will they be issued a voter registration card?

MR. SHORTER: Senator, they will be issued a voter registration card if they sign the affirmation statement at the bottom.

SEN. FRASER: If they sign the bottom saying "I'm who I say I am" on the bottom, they send this in, they're going to get a registration card?

MR. SHORTER: That is correct.

SEN. FRASER: Okay. But I also understand that when they go to vote there's going to be a flag on that, and when they come in they've got to show something to prove that they are who just signed up. Is that correct?

MR. SHORTER: Yes, sir, they will have to --
SEN. FRASER: Okay. But you also -- if
I understood the person from Houston, is that when
they fill this out, they mail them a notice that
they're going to have to provide some kind of
identification. And if they took that letter that
they just mailed them in and said "Here is my proof of
identification. They just mailed this to me,"
basically they could game the system by showing no
identification, mail it to the address, take that as
their form of identification, and they could use --
and let me give you kind of a ridiculous case. But if
I filled this out as Mickey Mouse and it was 103
Lighthouse Drive and I sent it in, would you send me a
card for Mickey Mouse?

MR. SHORTER: You would get a card,
Senator, if you have a -- have signed the affirmation.

SEN. FRASER: If I sign the bottom of
it, you're going to send me a card for Mickey Mouse.
Okay. Now I've got a registration card that says
Mickey Mouse. I'm going to walk in to my precinct
with that card, and you've also sent me a notice
saying I've got to show other identification. I take
the letter you just mailed me, walk in to my polling
place, I lay down my Mickey Mouse card, I also lay
down the letter you just mailed me, if I give them
that, are they going to allow me to vote?

MR. SHORTER: If you're using that letter -- if we're talking about the letter from the government agency, it will be counted as a form of identification.

SEN. FRASER: Okay. So if someone is unscrupulous and they know how to do this, let's say some random group like ACORN that decided they wanted to try to use something to register people to try to get a card and to game the system and then to go in and vote and falsify that vote by not giving the proper identification, the scenario that I just laid out, is that possible under current law?

MR. SHORTER: It is possible, Senator.

SEN. FRASER: Okay. In the this last election cycle -- and I'm sorry. I'm not going to ask you that question there. We should have asked the registrar because of the people that voted late in this last election cycle I have been told that they suspected thousands and thousands of that scenario that I just suggested.

But if I took that Mickey Mouse voter ID and I laid it in front of the person, would the person say "Thank you, Mr. Mouse. Here is your card," and they would allow me to vote? Is that not correct?
MR. SHORTER: Theoretically, Senator, that -- that could happen.

SEN. FRASER: Okay. So I guess what I'm trying to establish with you is that it sounds like today if I want to game the system and I want to cheat, it's very difficult for either the Secretary of the State or that election clerk or that election judge to identify that I'm cheating and know for sure. Is that correct? Especially if I'm voting in Houston or Dallas or someplace where they have no reason to know who I am, is it difficult -- would you say that it is difficult for them to identify, to determine for sure, that that person representing themself as Mickey Mouse really is Mickey Mouse?

MR. SHORTER: Senator, I would say that there may be -- they may have an opportunity to identify it. However, to do something about it based on what is currently in statute would be difficult.

SEN. FRASER: Okay. Well, actually that was the next question. It's difficult to identify, but it sounds like it's even more difficult to proceed to prosecute because if you can't identify it, you don't have the authority to ask them questions to prove who they are. And even if you think you know that it's the wrong person, if you accuse them of
doing that, there's really nothing under current law
to allow you to do that, is there?

MR. SHORTER: Well, they're a registrar
who has some concerns, has reasonable concerns, does
have the capacity to challenge, but there's not
provisions for once those challenges are made for you
to do much with it.

SEN. FRASER: Okay. Under current law,
as we say here, even if there's a challenge -- and
let's say that -- let's go back to the Horseshoe
Bay -- let's go to the Horseshoe Bay example.

MR. SHORTER: Yes, sir.

SEN. FRASER: If I voted twice there,
they'd know it was me and probably they would say it's
a challenge, and they probably could call the D.A. and
say "The Senator just voted twice. We need to check
into it." But the question is, I just voted twice, I
just placed two ballots, what would happen to those
ballots? Would they be put in the pile to be counted?

MR. SHORTER: Yes.

SEN. FRASER: Okay. So I just voted
illegally. You knew I voted illegally. You're going
to report me to the D.A., but I just voted. And if
that is a close election, that County Commissioner
that I voted for, and they're going to be within one
or two votes, I just impacted an election by voting illegally.

MR. SHORTER: Would you allow me to defer to my general counsel on whether or not that actual vote would count twice?

SEN. FRASER: I'm sorry. I didn't say it was going to count twice. I voted twice. I'm saying I voted as Troy Fraser and I voted as Steve Fraser, and both of those votes I voted under current law. The vote, my understanding is, and I've asked the registrar of these counties what they would do, if someone comes and votes and they place a vote, they have to put it in the pile to count. But even if there's appeal, they could pursue it and possibly get an indictment. But I think what you're saying is if it's hard to catch them, it's even much harder to prosecute.

MR. SHORTER: And, Senator, on that -- on that particular question, I think my best response to you is for you to allow me the opportunity to research that one and get back with you as soon as possible --


MR. SHORTER: -- because I'm really not clear on that one.
SEN. FRASER: The other question I would ask you and that I want to clarify, if someone suspects the scenario that we just talked about where they suspect somebody has voted illegally, it got put in the pile to count and they think that they voted twice like the lady with the big hat, if that is referred to someone to check it out, if it happens in Dallas, probably that's going to go to the District Attorney, or they could send it to -- directly to the Attorney General, or it's possible it could be sent to you, but if they send it to you, aren't you going to refer it to the District Attorney and the AG? Is that correct?

MR. SHORTER: If a complaint is sent to the Secretary of State's Office, our office looks at the complaint, and there's a general assumption among the staff and the Secretary of State's Office and that assumption is if the information that is being presented on that -- on that complaint is actually considered true, and if it's true we -- of course understand, Senator, our office does not do the investigation. But if the allegations as presented would present a crime under the elections code, our office would refer it to the Attorney General's Office.
SEN. FRASER: Okay. And I guess the follow-up question to that is if it's hard to identify and it's hard to prosecute and there's two other sources, the assumption is that the number of these going to your office probably -- is it great? If they're having trouble identifying it and they're having trouble prosecuting it, do you --

MR. SHORTER: Correct. Senator, the number -- in terms of -- I can give you some statistics. In terms of the Secretary of State's Office since September 1, 2007, there were 50 written complaints sent to our office, and those -- those were -- our office looked through those. We looked at them to see if there was merit. Actually related to -- complaints related to voter impersonation, we found about seven of those complaints. Two of them were actually referred, one was not referred, and one is pending. One is pending with our office now to be actually referred to the AG's Office.

SEN. FRASER: Thank you, Mr. Shorter. I do appreciate the information.

SEN. DUNCAN: Sen. Van de Putte or -- Sen. Van de Putte? And the court reporter has been going for about almost two hours. If we could -- you take as long as you need, but I would propose that we
let her take a break in about ten minutes, if we
could.

SEN. VAN de PUTTE: Thank you,
Mr. Chairman, and thank you very much for being here
particularly in the late -- excuse me -- the early
hour that we're in now in the next day.

I wanted to ask a few of the questions
earlier yesterday. In speaking to Sen. Fraser when he
laid out the bill, I asked several questions at that
time. He said that the Secretary of State's Office
would be the most appropriate. So the questions that
I'm asking you are actually the ones that Sen. Fraser
had asked me to ask.

You. And please give our regards to my
dear friend and fellow San Antonian Hope Andrade.

I wanted to ask you if you would just
take a look at the bill, and hopefully you have a copy
of that or your general counsel has that for you. On
the first page in Section 15.005 --

MR. SHORTER: Uh-huh.

SEN. VAN de PUTTE: -- there's a
timeline between the requirements when each voter
registration certificate issued under Section 13.142
or renewal registration certificate issued under
Section 14.001. In the Senate Bill that is proposed,
we have to do a lot of changes to educate our election judges and our clerks. What happens in the timeframe between the people with current registrations that are caught between the renewal for purposes of education?

MR. SHORTER: For purposes of education of --

SEN. VAN de PUTTE: Yeah.

MR. SHORTER: -- of the new bill?

SEN. VAN de PUTTE: Yeah.

MR. SHORTER: Well, Senator, what we would do -- what our office is planning on doing for all elections-related bills, we're in the process right now of doing the long-term planning for voter education for our office. And voter education in our office deals with some specific things. Voter education in our office deals with we want -- we want to talk about where to vote, how to vote, what do you need to vote, what are the items that you need to vote, all the resources. So we're planning that now.

If this bill were passed or any other bill that you would pass related to changes in a requirement for voting, as we continue to develop our module for voter education, we would be able to put the requirements that this bill or any other bill has into our planning module for voter education that
we're currently developing.

SEN. VAN de PUTTE: Since the proposed regulations and rules would be greatly changed from the process that Texas voters have used in the past several years with the requirements of the voter certificate and a photo identification, how would the Secretary of State's Office propose to inform voters of these changes?

MR. SHORTER: Senator, we would inform through the existing process that we have, which is a pretty extensive process. For instance, during the last year on voter education, it was a $3 million process that we undertook to inform voters of what's going to be going on in the election cycle that ended in November of 2008. We're doing that now.

It would mean that our office would have to make sure that all of the changes are implemented, and implementation would mean all notifications that would need to be made, we would have to get that done. All training for county Election Officials through our current -- through our current system of educating county workers, election workers, which we hold periodically through the year, we would implement or make sure that this new information is a part of that process. Poll worker training, which we're looking at
right now, we would also make sure that those things within the bill that actively affect poll workers, those changes will be put into what we're doing now or what we're planning to do.

Generally after -- during a session when a session is over, there are a lot of election bills that are passed, and our pattern of preparing for coming out of session, going into a season of getting ready for elections, we start looking at what bills have been passed. We're putting together the structure now on what we're doing on voter education and then fit those into the model. Sometimes when there are major changes like this, it does require more work on our -- a heavier workload on our staff, but the staff at the agency has proven time after time that they're capable of doing it.

SEN. VAN de PUTTE: Well, I believe that the Secretary of State's Office and particularly this Secretary of State, is more than willing and it's been shown. My concern is that -- have you seen the fiscal note that is attached to the implementation of this bill?

MR. SHORTER: Yes, ma'am, I have.

SEN. VAN de PUTTE: According to the fiscal note, your -- the Office of the Secretary of
MR. SHORTER: Uh-huh.

SEN. VAN de PUTTE: -- is to absorb the cost. Given that, how do you plan to notify each of the voters, given that in Indiana and Georgia individual mailings were made to each registered voter informing them of the change in voter ID? And since we have no legal, I guess, basis, at least in our fiscal note, for the Secretary of State to implement that, how would the Secretary of State's Office plan to inform each voter, which were the requirements that they felt under -- to get pre-clearance under the Voting Rights Act, how would you-all achieve that with zero money?

MR. SHORTER: Senator, we would -- we would achieve that by using the funds that we've been using to do it in the past. We would use the HAVA Funds that have been set aside for voter education. I remember your asking this question earlier about the zero fiscal note that our office put on it. We put it on there, and when this bill -- when a similar bill was filed like this in the previous session, staff shared with me that there was a zero fiscal note on it as well, and it was because HAVA dollars were able to be used.
SEN. VAN de PUTTE: I believe the fiscal note for the voter ID bill in the 80th Legislative Session that was passed by the House was at $600,000, and so we --

MR. SHORTER: Yes, ma'am.

SEN. VAN de PUTTE: So that's what I wanted to ask is that -- I know that Hope is very good at squeezing dollars, but how do you -- how does the Secretary of State's Office plan to inform -- and it's not just the training. From what we understand of all voter ID laws that have been passed, each of those Secretaries of State have done an individual mailing, not just posting on the Web, not that. Do you plan to send an individual mailing to each voter with or without the passage of this bill?

MR. SHORTER: That -- first of all, that would be, of course, Secretary Andrade's decision.

As for that $600,000 fiscal note in the previous bill, that was not a fiscal note that was put on by the Secretary of State's Office. My understanding is that was a fiscal note that was put on by DPS. Even though that fiscal note was $600,000 put on by DPS, our fiscal note on that previous bill, if I'm understanding correctly, is that it was still zero because we were not looking at those funds to --
SEN. VAN de PUTTE: Okay.

MR. SHORTER: -- and we do still now.

For instance, right now in voter education, in HAVA dollars, we still have $2 million left. Our staff, in anticipation of bills coming out of the session, we've been working with the EAC already to see -- make sure that bills that are passing through the House and through the Senate or through the Legislature of Texas would be able to -- we would be able to use HAVA dollars for that. We feel comfortable that we can, but we don't want to get towards the end of the session and find out that we were incorrect.

SEN. VAN de PUTTE: Thank you. I would also ask the questions that I asked Sen. Fraser that they said that the Secretary's Office would be more appropriate. With regard to naturalized citizens, what is the difference between a certificate -- a citizenship certificate, which is in the first section of the bill that's allowable with the photo ID, and citizenship papers, which is allowed under the second part of the bill?

MR. SHORTER: Senator, I remember your asking that question earlier today, and I asked our staff today to help me and answer that question. They have not gotten back to me, of course, at four o'clock.
this morning. But if you would allow me to get you
the answer to that in a few hours, I will provide that
for you.

SEN. VAN de PUTTE: Thank you. That
would be helpful to us since we have 56,000
naturalized citizens. And I believe the certificate
is the eight by eleven certificate that is issued at
the time of naturalization, which has a photo, but in
the case of many of our constituents who have been
naturalized it is a photo of them when they were a
young child or a young adult, and the citizenship
papers may be the little wallet size card. So it
doesn't have a photo.

MR. SHORTER: Yes, ma'am.

SEN. VAN de PUTTE: But I think because
of the language and since it's each of those
documents, it would be very helpful to us.

And I know that there are probably some
more questions from other members, but I know that our
Stenographer has been there, but when you come back, I
know that some of the questions, if I have the chance
to ask, or maybe one of the other members, is the
statistical and demographic data of our current Texas
voters and who are registered.

MR. SHORTER: Yes, ma'am.
SEN. VAN de PUTTE: So I will stop at this point the questions so that we can take a break, but just to let you know that's probably coming up.

MR. SHORTER: Thank you.

SEN. VAN de PUTTE: Thank you, Mr. Chairman. I'll proceed after.

SEN. DUNCAN: Do you want to maintain the floor when you come back?

SEN. VAN de PUTTE: I would love to maintain the floor after just to continue, but I don't want to go beyond the 4:40 a.m.

SEN. DUNCAN: Okay. We will then -- Members, with that we will stand at ease for ten minutes and be back at 4:50.

(Recess: 4:41 a.m. to 4:53 a.m.)

SEN. DUNCAN: Okay. Members, we'll come back to order. Sen. Van de Putte has the floor.

Before she begins again, we'll have -- I need to make this announcement to the folks who are in the gallery or who are waiting to be in public testimony. The Chair would request that anyone wishing to testify return to the registration desk and check in with the clerk. This will allow the clerk to pull the relevant witness cards, and we can proceed through public testimony more efficiently. All
witness information will be entered into the record and witnesses present and testifying will be noted as such. Those who do not testify will be entered into the record as nontestifying but registering their position for or against the Senate Bill 362. We think this will be a way to help facilitate those and also give us a little better idea of how to manage yours and our time.

Sen. Van de Putte, you're recognized.

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

Thank you. It's good to be back with you again. Before I ask some of the demographic data, there was one part that I forgot to ask that I had asked Sen. Fraser and wanted to reiterate. Under the proposed bill, we have two different types of military ID as well: Those military IDs that have a photograph and the military IDs that do not have a photograph, and they are listed, I think, in two different sections of the bill.

My question is having to deal with the inconsistencies of addresses with our military members, not veterans. Once they're veterans, they're living in Texas and not here because of the duty station. Under the provisions of this bill or maybe
even currently, but currently our military members do not have to show a photo identification. Under this bill they would. How would a clerk or election judge treat the inconsistencies in nonalignment of address on the photo ID with the -- with the certificate?

MR. SHORTER: Senator, I don't have that answer, but I will get it for you, and that would involve -- and I'll tell you what I will go through: Asking my staff and also visiting with the clerks to see have they seen this, is this something that has happened already, or based on this particular bill would it happen.

SEN. VAN de PUTTE: Well, I don't think we know because they don't have to show a photo ID.

MR. SHORTER: Correct; you're right; you're right; absolutely.

SEN. VAN de PUTTE: And because many of those members that are here still have their own state's driver's license because -- or they're issued the DOD license on some installations, it doesn't reconcile with the voter certificate.

MR. SHORTER: Right.

SEN. VAN de PUTTE: And particularly for those career military who then become civilian, they keep their -- that because they may be going to
retire, and it's particular. So if you would do that?

MR. SHORTER: Yes, ma'am.

SEN. VAN de PUTTE: And in that also how would, under the proposed bill, we treat the inconsistencies in addresses in college students who may still keep their primary place of residence, which is their home and the home of their parents, for purposes of their driver's license because that's their permanent address and they are only temporary, yet choose to register in the town that they are now going to college. So the photo identification or driver's license does not match up with the certificate. So those are two instances where how would that -- those be treated.

MR. SHORTER: Yes, ma'am.

SEN. VAN de PUTTE: My other question is -- we know from some of the data that the affected groups and what we -- what is the state's burden to prove at the Department of Justice is the availability for African-Americans, Hispanics, language groups to be afforded the same ability, in other words, no discrimination? Can you tell us of the 13 million plus voters, do we know how many voters are African-American in the State of Texas?

MR. SHORTER: Senator, we don't know
because that data is not tracked on race and ethnicity right now. The only thing that is tracked is we can -- based on our new TEAM system, we can cross-reference Hispanic surnames, but that's inconclusive, so --

SEN. VAN de PUTTE: Van de Putte.

MR. SHORTER: Exactly. So the answer is right now there's not a mechanism to track race or ethnicity.

SEN. VAN de PUTTE: So how would we be able -- if we don't know -- if we're not capturing the data, the data is not available as a base point of how many registered voters we have who are African-American or Latino or Spanish speaking, how can we benchmark and prove up to the Justice Department and support litigation that there will not be a negative effect since we have no data?

MR. SHORTER: I would assume that our staff has been using some other means to do that. I don't know what that is, but I will find out for you.

SEN. VAN de PUTTE: Okay. So what I have so far is that you will get back to us on certificate versus papers --

MR. SHORTER: Yes, ma'am.

SEN. VAN de PUTTE: -- for naturalized
SEN. VAN de PUTTE: -- since the other states that have passed this so far do not have nearly the degree of those naturalized citizens as we do; and that you will also check on the incongruencies of address for both our military members and college students.

MR. SHORTER: Yes, ma'am.

SEN. VAN de PUTTE: And you will also get back with us the data, if it exists, of how many voters we have that are indeed African-American and Hispanic so that we can have a benchmark. We need that data to be able to prove that. So those are the things that you are going to be helping us with.

MR. SHORTER: Yes, ma'am, I will; we will. John and I will be notifying staff so they can get on it and hopefully give you an answer before the end of the day.

SEN. VAN de PUTTE: Well, thank you, but I know you haven't gone to sleep yet, so I appreciate the hard work of your staff. And again, my regards to my dear friend, our Secretary of State.

MR. SHORTER: Thank you.

SEN. VAN de PUTTE: Thank you.
SEN. WENTWORTH: The Chair recognizes

SEN. WHITMIRE: No, I'll pass
(inaudible) I've got a quick question, quick, quick, quick. You were responding to Sen. Fraser's hypotheticals, and he was talking about if he ran in and voted and then he went back out and got his brother's card and voted again that nothing could be done. Is it not true, sir, that the election officer is in total control of his precinct? I've seen folks be arrested for handing out cards too close, poll watchers for harassing voters. Isn't it true that if you try to go in and vote twice in the same timeframe that you could be arrested for voter fraud at that moment and maybe even have a mental warrant served on you if you tried to do it like he described it? So aren't we -- aren't we really being a little ridiculous at five in the morning with some of our hypotheticals?

MR. SHORTER: Sir, I'm not --

SEN. WHITMIRE: You were being awful nice. I realize you're in a difficult position, but I don't -- is it realistic that someone, the same person could vote twice within a 30-minute timeframe?
MR. SHORTER: It's possible, sir.

Whether --

SEN. WHITMIRE: It's possible to get arrested for doing it, too, is it not?

MR. SHORTER: That is correct.

SEN. WHITMIRE: Okay. That's all I wanted to clear up because -- and I could go through his other hypotheticals.

What really concerns us and I guess it's been somewhat addressed is the cost and the commitment to educate the public.

MR. SHORTER: Yes, sir.

SEN. WHITMIRE: Have you been in any planning sessions where you're going to have the resources and you have the spots, as Sen. Williams pointed out? I mean, are we really serious and ready to go with that, or is that a hypothetical, too?

MR. SHORTER: No, sir. Our office is actively planning our voter education program for the next cycle now.

SEN. WHITMIRE: Well, that's great, but what's the provisions for doing a voter ID plan?

MR. SHORTER: What we're doing now is looking at -- because this is one of our new bills that we're working on and that has been brought to us
for us to look at, we're looking at what costs would
be associated with doing those things within the bill
and fitting those into the funds that we have
available. Based on the fact that it is not a
Presidential Election year, we feel that the funds
that we have available now we could -- we could
theoretically -- we could undertake this.

There are -- in terms of training for --
training for elections and new initiatives, that's
already -- we're already directed to do that. So our
agency as a whole is -- there's some things you
anticipate and you know and you plan for, and we're
already there, sir. Because what we will have to do
is we'll have to prioritize in terms of maybe some new
initiatives versus -- that are not legislatively
mandated versus those that you-all mandate to us.

SEN. WHITMIRE: Okay. I yield at this
time.

SEN. DUNCAN: Sen. Watson, you're
recognized.

SEN. WATSON: Thank you, Mr. Chair, and
thank you for being here. I know it's been very long.
And, Members, one bit of information.
Yesterday, not today, but yesterday, although it feels
like one day, was his ten-year old son's birthday, and
he stayed with us all during that period of time, snuck away I think briefly to wish him a happy birthday, but we really appreciate your being with us --

MR. SHORTER: Thank you.

SEN. WATSON: -- and hope you will tell him we said happy birthday.

Just a couple of quick questions. One is you shared with me some numbers on a piece of paper, and I don't know what the paper was created for, but it has at the top of the page the number 5, and then it says "Number of voters who have registered since 2006 without a driver's license number." What was this document created for?

MR. SHORTER: Sir, this document was created -- Senator, this document was created in a response to questions that were asked of our staff last week by House Elections.

SEN. WATSON: Okay. And in that, what you did is you created two sets of numbers: One was a set of numbers of voters who registered since January 1, 2006. And explain for me again why that's an important number date.

MR. SHORTER: When the Help America Vote Act was passed in 2002, there was a requirement put in
the provisions of the Help America Vote Act for
uniformity standard purposes for the driver's license
to be a required form of ID in terms of registration.
Prior to January 1, 2006, it was optional as to
whether or not you included your driver's license on
your voter registration application.

The voter registration application
now -- the first thing it asks for in Section 8 is
either your driver's license and your Texas -- or your
Texas ID, and that's a requirement if you have one.
Prior to January 1, 2006 it was optional.

SEN. WATSON: Okay. So the numbers you
came up with you demonstrated -- and I think we had
had some conversation -- Sen. Fraser and I had had
some conversation earlier in the day. And when you
look at those who have registered since January 1,
2006, the key date that you mentioned, and you look at
those numbers, about 91.9 percent have registered
using a driver's license. Is that correct?

MR. SHORTER: Using a driver's license
or social security number.

SEN. WATSON: Well, here is the way --
let's make sure we're clear on this. The first
category of numbers who registered with a driver's
license, and I guess that's with a driver's license
exclusively. Is that correct?

MR. SHORTER: That is correct, sir.

SEN. WATSON: And then the second category is those who registered with a social security number, and that would be exclusively with a social security number?

MR. SHORTER: That is correct.

SEN. WATSON: And then the third category would be those who did something you don't really have to do, but they did it, and they filled in both driver's license and social security?

MR. SHORTER: That is correct.

SEN. WATSON: So if I wanted to identify the number of people who registered with a Texas driver's license and get a total number, I would add Category 1 and Category 3?

MR. SHORTER: That is correct, Senator.

SEN. WATSON: Now, something else you did in response to the question from House Elections was you said "In addition agency staff queried the entire statewide file which reflects the following breakdowns concerning identification numbers for all voters." So that would be folks with voter registration certificates, voter registration certificates including those from before January 1,
2007?

MR. SHORTER: That is correct. That's everyone in our vote registration system.

SEN. WATSON: And those folks weren't required, as you've said, to utilize a driver's license or social security number?

MR. SHORTER: Yes, sir.

SEN. WATSON: And that -- when we look at those numbers, and you have the same categories, you have number of voters with a driver's license, again exclusively, number of voters with a social security number exclusively, number of voters with both and the number of voters with neither. When we put those numbers together, we know that about 25 percent of the population that have voter registration certificates don't indicate that they have -- that they didn't use a Texas driver's license to get that. Is that right?

MR. SHORTER: Yes, sir.

SEN. WATSON: Now, you also would have no way of knowing in either of those that have been registered since January 1, 2006 or those that have been registered since well before that time who might have lost their driver's license during that period of time?
MR. SHORTER: No, sir.

SEN. WATSON: And the Secretary of State's Office wouldn't have any way of knowing whose driver's license might have been expired for over two years now?

MR. SHORTER: If they already have their voter registration card.

SEN. WATSON: Right. So, for example, if I registered to vote, let's say ten years ago, just to use a round number, I wouldn't have been required to use a driver's license to register. Is that correct?

MR. SHORTER: Correct.

SEN. WATSON: And if I continue to vote on a regular basis, as I understand it, I am re-registered each time I register to vote or I go vote. Right?

MR. SHORTER: Yes, sir.

SEN. WATSON: So if I lost my driver's license nine years ago but I continue to register, I might be a registered voter in the State of Texas maybe even use my driver's license when I registered, but I no longer would have a driver's license?

MR. SHORTER: That's a possibility, sir.

SEN. WATSON: No one has asked the
Secretary of State's Office to do any sort of studies or provide any information demonstrating whether there are certain populations or demographic groups in Texas that are less likely to have a driver's license and use their driver's license when they apply for a voter registration certificate, have they?

MR. SHORTER: To my knowledge, no, sir.

SEN. WATSON: And the truth is you wouldn't have any way of putting that data together, would you?

MR. SHORTER: Not as an agency alone.

SEN. WATSON: Well, if I told you that the Texas Department -- you'd have to go to DPS?

MR. SHORTER: Probably. That's one of the agencies that pops into my head.

SEN. WATSON: And I think we talked a little bit earlier today -- I think I showed you an answer that DPS has given. You wouldn't be surprised to know that DPS is not aware of any studies regarding a way to demonstrate whether certain populations or demographic groups are less likely to secure a driver's license than others, you weren't surprised when I shared that with you earlier today, were you?

MR. SHORTER: No, sir. I recall.

SEN. WATSON: Yeah. Thank you very much.
much, and I really do appreciate it along with everybody that you've given us so much time.

SEN. DUNCAN: Thank you, Sen. Watson.

The Chair recognizes Sen. Patrick.

SEN. PATRICK: Thank you, Mr. Chairman.

Just a quick question. There was an earlier comment made that it was very unlikely that someone would vote twice in 30 minutes. But the truth is if someone did fraudulently get, let's just say ten voter registrations, and they didn't send in a name like Mickey Mouse but sent in a very normal name that wouldn't catch anyone's attention. And if I had ten cards or that person had ten cards, they could go to one precinct and vote, and they could go down the street to another precinct and vote --

MR. SHORTER: (Nodded)

SEN. PATRICK: -- and another precinct and vote because they'd go in over a different registration card each time.

MR. SHORTER: Okay.

SEN. PATRICK: So a person could, if they wanted to, or they could register in the same precinct and go back three days later if they started during early voting. Right?

MR. SHORTER: Repeat your -- repeat the
last part of your question.

SEN. PATRICK: The last part of the question, if you had registrations in the same precinct, you could go back over a period of multiple days if you were willing to take that risk and vote. So a person could vote more than once. I mean, it's not an extreme thought that someone could register under several different names.

MR. SHORTER: It's a hype -- it is one of those hypotheticals that could happen.

SEN. PATRICK: All right. Thank you.

SEN. DUNCAN: Thank you, Sen. Patrick.

The Chair recognizes Senator -- do you want to go ahead, Sen. Watson, and enter -- you've got a document you want to enter?

SEN. WATSON: Yeah, let me just ask a quick question. I should have done that. Do you have a clean copy of the sheet that has Question No. 5, the answer from the House Elections Committee that we could make an exhibit for our record?

MR. SHORTER: Yes, sir.

SEN. WATSON: Okay. We'll wait until you're done, but if you'll just remind me of that, we'll attach that after your testimony.

MR. SHORTER: Yes, sir.
SEN. WATSON: Thank you very much.

Thank you, Mr. Chair, for letting me do that out of order.

SEN. DUNCAN: The Chair recognizes Sen. Davis.

SEN. DAVIS: Good morning.

MR. SHORTER: Good morning.

SEN. DAVIS: I join my colleagues in saying thank you to you for staying so long with us. And I have a very quick question for you. I apologize if you've already asked -- been asked this question and answered it, but what is the amount of money that the Secretary of State has set aside in anticipation of the possibility of having to educate our voter community about the requirements -- the new requirements that would be placed upon them under the Senate Bill that we're looking at today?

MR. SHORTER: We haven't determined the actual amount, Senator. We are looking at all of our opportunities and looking at the available resources we already existed -- already have. We know right now -- if there were no other funding, we know that we have access to $2 million through our current HAVA Funds for voter education.

What we need to do now is -- and we feel
comfortable based on the projections -- being that it
is not a Presidential Election year, we feel
comfortable that we can do what needs to be done
within that window. There are also some opportunities
potentially for us to maybe draw down some additional
HAVA Funds. We're not -- we're investigating that as
well.

So what we're looking at is if this bill
is passed as it is, staff is looking at, based on
access to HAVA dollars, what would it cost to do this,
to implement this, to do the training, to do the voter
education statewide. We don't have those figures yet.
However, based on past precedent within the agency and
with the access to those federal funds, we feel like
we can do it with those funds and be consistent with
how we've done it every year.

SEN. DAVIS: Let's say we weren't
examining the issue that's before us right now and we
weren't going to create any kind of new voter ID
requirement in the State of Texas. What would the
Secretary of State's Office have used that $2 million
amount for? What kind of educational programs do you
typically engage in?

MR. SHORTER: Well, we don't -- we don't
anticipate this particular bill consuming all of
that -- those funds. For instance, our entire effort last year would focused on some key things. And if you don't mind, I'd like to kind of just --

SEN. DAVIS: I'd appreciate that.

MR. SHORTER: -- share with you some of the ideas from talking with our staff on voter education. In 2008 we have what's called a Vote Texas Program. That's our voter education program. That focuses on newspaper, radio, TV, PSAs, interactive Web. It allows us an opportunity to be creative to reach the people where they are, and we do several things: We focus on the basics of education. Number one, how to vote, what needs to happen to vote, where to vote, where are you going to vote, what do you bring -- what do you need to bring with you to vote. If this were -- if this bill were to pass, what would you need to bring to vote would be the -- it would change.

We're at a point in our development where we can now make those changes. Theoretically what happens in the Secretary of State's Office is we get through with the session, we look at all of the changes and we use the summer months -- we use the spring to answer all your questions and start planning. We have certainty after the session as to
what you as a legislative body have given us, the mandates and directions you have given us. We use that time then to start implementing, plugging in.

One of the other things we do is what is the process and -- what is the actual process and then what are the rights of the voters. So based on that, it seems very plausible that we would be able to take the directives of this bill or any bill that you as a legislature provide and fit it into that formula and meet HAVA requirements for what we are mandated to do in terms of educating our voters.

SEN. DAVIS: And in the past when you've implemented a program like that, and I gather from what you're saying you've engaged in exactly this kind of --

MR. SHORTER: Yes, ma'am.

SEN. DAVIS: -- education effort before, what would the cost be in a typical election cycle for you to administer that program?

MR. SHORTER: Last year we -- last year -- the last election cycle was $3 million.

SEN. DAVIS: It was $3 million. And that's $3 million educating a voter group that has for many years been operating under the same rules repeatedly. Correct?
MR. SHORTER: Yes, if there were -- I came to the agency during the middle of that process. If there were legislative changes during the last legislative cycle, those changes were intertwined into the voter education process. I'm not -- I'll have to go back and ask what changes were made during the last legislative session that would have affected how we rolled out this particular -- last year's initiative.

For instance, within all of that, there's also the Project Vote where we start -- the education process of educating voters starts also at the age of educating our school-aged kids. 1.1 million people -- 1.1 million students in over 300 school districts last year participated in Project Vote. So those were some extra things that we've always done even with legislation like this we will still be able to do because we have it down to a science now on how to do it, and we've been able to bring those costs down.

SEN. DAVIS: And now that you have it down to a science and in the last election cycle given that you have it down to a science, you've spent, you said, about $3 million on the program. Could you anticipate a scenario where with a new voter ID requirement, one that is, well, quite lengthy in terms
of the amount of paper that it this takes up on the
bill that's been proposed, could you anticipate given
the need to educate on so many new features of a voter
program that it might cost you more than $3 million to
educate Texans on that program?

MR. SHORTER: Senator, based on past
precedent, I think it will be highly unlikely that the
expenses would increase that much because many of the
things that this bill is requiring us to do we're
already doing it on legislation that has existed for a
long time.

When we have a poll -- when we have the
poll worker training or the training for Election
Officials, it's very detailed information, and there
are little tweaks that the legislature makes, and
these are not 30-minute trainings. These are
generally two- to three-day trainings. So it's not
like if we -- if this bill were implemented the
training needs would be -- or the training modules
that will be developed would be any different than the
modules that we are already developing because the
ones we're developing now are pretty extensive.

SEN. DAVIS: And did the $3 million
figure that you -- that you cited a moment ago on your
voter outreach program in the last election cycle, did
that include the costs of training poll workers on
whatever tweaks came in the last legislative session?

MR. SHORTER: It is my understanding
that it did, but, Senator, I don't mind verifying that
for you to make sure that it's all-inclusive.

SEN. DAVIS: I would appreciate that.

And if you could provide us with information in terms
of exactly what that poll training looked like, the
poll worker training looked like, I would appreciate
that.

MR. SHORTER: Senator, we're very
excited about our poll worker training because we have
two aspects: It can be done in person, but we also
have poll worker training now that can be done on
line. And one of the things we're really trying to
do -- and with the hope of encouraging more people to
volunteer or sign up to be poll workers.

SEN. DAVIS: Would you anticipate that a
bill suggesting the changes of this magnitude might be
a more complex training program -- that might require
a more complex training program than you've had to
engage in in the past where the legislature may have
tweaked, to use your word, the voter requirements?

MR. SHORTER: And maybe, Senator, using
the word "tweaked" was not probably the appropriate
word to use. I don't see anything at this point that would cause me as the operations person within the agency to be alarmed.

SEN. DAVIS: Okay. Thank you. I appreciate it.

SEN. DUNCAN: All right. Thank you, Sen. Davis. There are no other members in the queue to ask questions. So, Mr. Shorter, you are excused. Thank you for your testimony.

MR. SHORTER: Thank you, Mr. Chairman.

TESTIMONY BY DENNIS BOREL

SEN. DUNCAN: The Chair calls Dennis Borel. Mr. Borel, do you have written testimony?

MR. BOREL: (Inaudible)

SEN. DUNCAN: Do you have pictures for us? All right. We'll need to get those marked at the right time.

MR. BOREL: Good morning. My name is Dennis Borel with the Coalition of Texans with Disabilities. Yes, I am from the Texas --

SEN. DUNCAN: Hang on just a minute.

MR. BOREL: Sure.

SEN. DUNCAN: We need to get your timer started.

MR. BOREL: Okay.
SEN. DUNCAN: All right. You're off.

MR. BOREL: Dennis Borel with the Coalition of Texans with Disabilities, a cross disabilities statewide organization, and I think listening to this day has been tremendously interesting. I haven't heard a lot of talk about people with disabilities. We've talked about a lot of different demographic groups. So I will use my time to talk about people with disabilities and my experiences with them and how I think this bill may impact them.

It's been -- one of the most fun things I've done for the last about four or five years is work with the Secretaries of State, starting with Mr. Conner, then Roger Williams and Phil Wilson. I met Secretary Andrade recently and look forward to working with her, but working on HAVA stuff and most specifically the opportunities to go around the state and do training sessions on accessible voting and accessible voting technology to disability groups around the state. I've been from El Paso to Beaumont to Laredo to Odessa and Dallas, points in between. It's been a pretty interesting experience, and I've met some incredible people doing that, and it's been inspiring.
In a few of the -- a few of the most inspiring ones, I've worked with a lady that was totally without sight, and she was able to use the new voting technology to cast a private ballot for the first time. I met another guy with very significant cerebral palsy. He didn't even have enough control to speak, and he had -- he wore a cap with a stick that came perpendicular out of his forehead, and he would use a speak synthesizer, but his brain was clear and fine. And using that stick out of his cap he was able to work a voting machine on his own.

But to me the best was a gentleman I met who was a member of the paralyzed -- Texas Paralyzed Veterans. He had broken his neck very high up, and he has no movement below the shoulders. He operates his power wheelchair with a sip and puff device. And incredibly he told me this story about going to his polling place and hooking up his sip and puff device to his machine, and for the first time since he broke his neck was able to cast a secret ballot. And, yes, there were tears in his eyes when he told me this story. These are the kinds of things that I have really loved doing for several years now.

To me perhaps the most amazing one was out in Palestine. I was invited to come out there and
do a training. I went out there and I -- there's some photographs you're looking at. I didn't give you written stuff. By this time of night, it's better to look at photographs anyway. But I went out to Palestine and I got there and they said "Okay. Now we're going to take off and take you where you're going to go for your training, and we went to a sheltered workshop, which, you know, is not something I particularly like. It's a place where people with disabilities, cognitive disabilities spend the day. They were assembling nuts and bolts all day, and they get some piece -- piece of work payment out of it.

But going in there I was kind of wondering "Well, how am I going to -- how am I going to do this training?" I had the local County Clerk with me and an accessible machine, and we set it up. And I quickly found out that even though I work with people with disabilities all the time I'm capable of making misassumptions. Even though these were folks with cognitive disabilities, they knew who McCain was, they knew who Obama was, they knew a Presidential Election was coming up. A handful of them were already registered. The others got registered there by the County Clerk, and they were tremendously enthusiastic. In fact they were the most enthusiastic
group I trained in the four years I've been doing this. They loved working the machine. They were excited about it. It told me a lot.

You know, this group, I'm quite sure that not a single one of them had a driver's license. I'm quite sure that none of them had a passport. I doubt that any had utility bills in their name. I don't think any of them were licensed hunters, fishers, carry a concealed weapon. Some may have Medicaid cards.

But the thing I was left with at the end of that day as I was left with at every single one of these trainings is all of us see the right to vote as something precious. I think for our citizens with disabilities it's at an even higher level. It's even more precious to them, how much they value it and to be able to do it on their own.

You know, I mentioned that they don't often have photo IDs, in fact they rarely do. And I tried to find some statistics on this and, you know, I've heard a few people talk about that some things are not tracked. Well, one thing I found out that we don't track is whether a driver has a disability or not. We track if they need corrective lenses of other things like that, but not disabilities. So I have to
rely on only my observations and spending the last
nine years going around Texas and working with groups
of people with disabilities and my own anecdotal ideas
about it. And I'd have to say that there's no doubt
that people with disabilities just don't have a
driver's license like the rest of the population.
They simply maybe cannot operate a vehicle, maybe they
don't see well enough, maybe they don't have enough
manual dexterity, but their incidents of driver's
license is certainly far below that of the general
population.

As far as things like passports, people
with disabilities are three times as likely to be
living in poverty as a general population. They're
not doing a whole lot of international travel. That's
not to say that there aren't people with disabilities
doing that, not to say that people with even very
significant disabilities have driver's licenses, even
quadraplegics, but as a general -- a generalization
they're less likely to have those kinds of photo IDs.

You know, I was thinking about this, and
I think that there's probably only one other
demographic group that has maybe a lesser
participation in driving and passports, and I think
that would be the very elderly. You know, I think
those two groups are kind of off by themselves of having a little bit less access to that.

Now, I do think that there are some of those alternative credentials that could work, but I think in almost every single case the likelihood of a person with a disability having one of those alternative credentials is far less than in the general population with the sole exception of the Medicaid card.

And the other thing is in our state, Texas is better than some other states. Some other states do not allow people with cognitive disabilities to vote. We do in Texas; we do. But, you know, people with cognitive disabilities are recently returned veterans with traumatic brain injuries. Sometimes their ability to gather all the documents they need to go somewhere is not so good. Sometimes they're not so good at doing that. Sometimes they might end up at the polling place and maybe they forgot one of the things they need. Or if they had that traumatic brain injury and they have a short-term memory condition, they just simply forgot to bring them, forgot their ID.

You know, to me it comes down -- the one question I keep coming down to is in any piece of
legislation, would this affect people with
disabilities more than other groups? And I think this
one does, and I think it does that. There would be a
level of effort required of them to line up everything
they need more so than other segments of our
population.

With that, I'll take any questions if
you have them.

QUESTIONS FROM SENATE FLOOR

SEN. DUNCAN: Thank you, sir.

Sen. Zaffirini, you're recognized.

SEN. ZAFFIRINI: Thank you,

Mr. Chairman.

Mr. Borel, thank you for your very
compelling testimony. I hope that everyone listened
to you and listened to you carefully. Are persons
with disabilities less likely to have photo IDs?

MR. BOREL: Yeah, absolutely, certainly
in the case of the driver's licenses. Obviously one
of my member organizations is the American Council for
the Blind of Texas. I mean, 100 percent of them don't
have driver's licenses. Other people with cerebral
palsy, quadriplegic spinal cord injuries, amputations,
cognitive disabilities, traumatic brain injury, all
have far less likelihood of driver's licenses and
At

passports. It's more a function of the fact that --
generally considered to be the lowest income
demographic group in our society and, therefore, less
likely to travel.

SEN. ZAFFIRINI: Have you read Senate
Bill 362?

MR. BOREL: I have; I have, yes.

SEN. ZAFFIRINI: So you're familiar with
the other forms of documentation that can be used to
prove one's identity?

MR. BOREL: Pretty much. I don't know
if I can recall every single one of them off the top
of my head.

SEN. ZAFFIRINI: Are persons with
disabilities less likely to have that kind of
documentation available to prove their identity?

MR. BOREL: Yeah, absolutely. You know,
very few would have a permit to carry a concealed
handgun. There are people, even people visually
impaired, even people totally blind, even people with
quadraplegics, that do have hunting licenses. But
I'll tell you as a rule, they're far less likely to
have hunting licenses. They're also far less likely
to have utility bills in their name.

SEN. ZAFFIRINI: What additional
barriers do persons with disabilities have in obtaining the kinds of identification required in this bill?

MR. BOREL: Uh-huh. Well, there is the monetary thing as an extremely low-income group, and then just getting around and gathering that information, you know, being reliant on public transportation or transportation provided by other people or having to have the caregiver with you, or perhaps a person is living in an institution like a nursing facility or intermediate care facility for the mentally retarded or even in an assisted living center. These are all folks that just are not as mobile as the rest of us, and they're not getting around as well as the rest of us.

SEN. ZAFFIRINI: Thank you. Is the notice provided for in Senate Bill 362 sufficient to ensure access to accurate information about this new ID requirement for the full range of persons with disabilities with whom you work?

MR. JOHNSON: No, not in my mind. I think we have a pretty aggressive campaign, the HAVA campaign. And like the gentleman in front of me, Coby, was talking about the Vote Texas, those things. The first Vote Texas effort was a $5 million effort.
The second was a $3 million effort, and that was about accessible voting for the most part. But that actually took stuff around, put stuff on PSAs, on TV. It did radio ads. It funded people like me to go out and do hands-on types of training. All those kinds of things, all those variety of things are needed. I think the written notice is just inadequate frankly.

SEN. ZAFFIRINI: What else would be needed if this bill were passed to ensure persons with disabilities really understood this law?

MR. BOREL: Well, I would -- well, I believe the Vote Texas campaign was successful, but you know, even though we're, I believe, five years in to Vote Texas I still think there's an additional need just for the accessibility components of HAVA. So I think it's not a short-term deal. I think this would need to be planned over perhaps several biennium. I really believe in the traveling road show, the hands-on deal where you go out to disability groups and out to their communities and find out where they are and do it face to face. That would be my recommendation.

SEN. ZAFFIRINI: What effect do you believe that this bill, if it becomes law, would have on the turnout of persons with disabilities on
MR. BOREL: Yeah, that's -- I've thought about this a lot, Senator. I would say at the -- at the beginning of HAVA, I would have said that there were two groups of voters with disabilities. The first group had gone to vote and voted, but had a hard time doing it and was less likely to go back, and the second group never went because they heard their friends talk about how they couldn't get in the polling place or couldn't get a private ballot. So there was kind of like this word of mouth negativity.

I think in the last few years as successful voting technology has come into play, polling places have become more accessible, I'm seeing a third category of voters with disabilities, ones that are telling their friends that "I did have a successful experience."

And I think if we set up experiences where voters with disabilities go to the poll and they don't have the right ID, and they will be less likely to have this ID and they haven't learned about it and they do a provisional ballot or they just simply leave, then those kinds of word of mouth stories will spread, and I think that will have an affect on some, a negative side frankly.
SEN. ZAFFIRINI: Thank you. Thinking specifically of Advocacy, Incorporated, do you believe that persons with disabilities who work with Advocacy, Incorporated would be able to meet the identification standards of this bill?

MR. BOREL: You know, the ones who work with Advocacy, Incorporated, I bet they would because in many ways activists people with disabilities are going to -- have figured out some way to get a photo ID, whether it's like the DPS, the state identification. I'd be more concerned about the people who aren't necessarily activists who are more maybe staying in their communities and their home most of the time, maybe in an institution, maybe in an assisted living center.

SEN. ZAFFIRINI: What effect do you believe the bill would have on the number of provisional ballots cast by voters with disabilities?

MR. BOREL: Well, I think it would clearly increase them because they would be casting them instead of just a regular ballot. I'm a little unclear about whether they would have to then go back again and show correct ID -- is that correct -- or is it -- would it be counted just as the initial provisional ballot? That I'm a little unclear about.
But if they would have to go back, you
know, return back and show correct ID, now that's
another trip. And for people that aren't all that
mobile who have to rely on others, who don't see well,
who use wheelchairs, who use walkers, who are 85, 90
years old, any time you're making a second trip to go
do something, you're less likely to do it.

SEN. ZAFFIRINI: What are the most
pressing issues reported by voters with disabilities
in using the Advocacy, Incorporated hotline?

MR. BOREL: I think they need to know
more about it, but I tell you the one I hear more
about is poll workers, you know, that -- the poll
workers are -- haven't perhaps set up the site as well
to make it as accessible as possible, don't understand
the accessibility features of the voting machines,
haven't had enough training on how to effectively
interact with a voter with a disability and how to
deal with someone who perhaps has a speech impediment,
who doesn't hear, who has very limited use of their
arms and hands. The poll worker issue and poll worker
training is, in my opinion, the top issue for voters
with disabilities.

SEN. ZAFFIRINI: And, of course, the
bill doesn't address any of those issues?
MR. BOREL: Not that I'm aware of, no.

SEN. ZAFFIRINI: Not that I'm aware of either.

MR. BOREL: Yeah.

SEN. ZAFFIRINI: You looked at the bill and you looked at the fiscal note, and I know that you heard our discussion regarding the cost of implementing Senate Bill 362. I am one of many persons I know who do not believe the fiscal note that indicates that there would be no fiscal impact to the state. How would you better use that money, the money that would be used to implement Senate Bill 326, in terms of working with persons with disabilities and ensuring their access to vote?

MR. BOREL: Good question. I'm really glad that I followed Coby here because he was talking about how they had a budget for this kind of stuff, the HAVA money. And it's still my opinion that the accessibility, the polling place features, the accessible technology, voting technology features that are part of HAVA, we're not done with that project. There's a lot more out there. Whenever I go out, there's just, you know -- I mean, we could be doing this several more years at the same level, I think.

You know, I want to encourage people to
vote. I want to encourage people with disabilities to
go out and vote. And to me the Vote Texas projects
have done that. That's what I'd like to see happen.

SEN. ZAFFIRINI: Thank you very much for
your testimony and for answering my questions. You
certainly are an inspiration.

MR. BOREL: So are you, Senator.

SEN. DUNCAN: Senator Ogden?

SEN. OGDEN: Mr. Borel, thank you for
your testimony. And, Sen. Zaffirini, thank you for
your good and detailed questions. I mean, you raise
some very important issues, but I'd like to clarify
that the type of documentation that can be used in
lieu of a photo ID is very similar to the type of
documentation that somebody -- or is the same as the
type of documentation of an individual who has some
sort of cognitive disability or other kind of
disability that they must produce in order to
receive state services or in order to receive
healthcare, whether you're talking about a Medicaid
card or Medicare card, correspondence from the
State Department of Health and Human Services,
correspondence from the Social Security
Administration, a social security card.

So I would think that it -- and I would
ask you this: It would be very, very rare based on the way I read this bill to find an individual who wouldn't have several of the types of identification that are acceptable, even if they don't have a driver's license. Wouldn't you agree?

MR. BOREL: Well, what I would say, Senator, is if you took a population -- a group of people from the general population and a group of Texans with disabilities and lined them up on every one of those types of credentials with the exception of the Medicaid card, I think the general population would be more likely to have them.

SEN. OGDEN: Well, but you can't make that exception because the Medicaid card is just as valid as any other.

MR. BOREL: It is.

SEN. OGDEN: If fact if you have a Medicaid card, you will get monthly correspondence from the state notifying you that you're still eligible for Medicaid, and that's your two requirements, you're done.

MR. BOREL: Well, that's true, sir. But again, if you look at the full list of alternative credentials, that's perhaps two of the alternative credentials where the person with the disability might
have the access edge whereas the others, they do not.

SEN. OGDEN: Might have the what?

MR. BOREL: An edge in having access to those things like a Medicaid card.

SEN. OGDEN: Well --

MR. BOREL: I mean, they'd be less likely to have it.

SEN. OGDEN: You know, maybe, maybe. I mean, the people of which you speak are going to have more access to some of those cards than somebody like me, for example. I know I've got a driver's license, so it's not a problem, but --

MR. BOREL: I was referring to the whole list.

SEN. OGDEN: I guess the point is while we're going through the discussion here is that it seems to me like almost every -- if not every single, almost every single individual which you described who is receiving some sort of state assistance or needs medical assistance almost certainly has to have the type of documentation needed to receive those circumstances -- that assistance, which will also be more than adequate to vote, in my opinion.

MR. BOREL: Well, Senator, I know you're aware that to be Medicaid eligible in this state you
really are the very poorest of the poor. And if you're just plain poor and not the very poorest of the poor, you don't have a Medicaid card. Thank you.

SEN. DUNCAN: There are no other members in the queue. You can be excused. Before you do that, though, we will introduce Exhibit 36, which is the photograph that you provided, and that will be in the record.

(Exhibit No. 36 marked and admitted)

TESTIMONY BY GARY BLEDSOE

SEN. DUNCAN: The Chair calls Gary Bledsoe. Mr. Bledsoe, before you begin, let's -- you have written testimony as well.

MR. BLEDSOE: I do.

SEN. DUNCAN: And we will submit that in the record as Exhibit 37.

(Exhibit No. 37 marked and admitted)

MR. BLEDSOE: Thank you.

SEN. DUNCAN: Yes, sir. If you'll state your name and who you represent, and you'll have ten minutes.

MR. BLEDSOE: Okay. Thank you, Mr. Chairman. My name is Gary Bledsoe. I'm President of the NAACP here in Texas. I want to thank all of you for staying here so long. Obviously this is a
very important matter. I probably can't be held to be
responsible for what I say at this time, but I will
try to be as clear as possible.

The NAACP is a 100-year old
organization. We have always been a multiracial
organization, and indeed we've been present here in
Texas since 1915 and have a long history with voting
rights within this state. And indeed we try to
identify issues that are problematic without regard to
any partisan issues, and I'm hoping that the
information that I provide here can provide a good
discourse and understanding of how we see the
legislation that is at issue here.

I know some years back when the Wolens
bill was up for consideration, we thought that would
be problematic. His party didn't make a difference,
and we were there to oppose that legislation, and we
feel the same way about the bill here, SB 362.

And I took a little bit of a different
tact in how I prepared the written testimony, but
based on a number of things that I've been hearing
today and maybe some of the questions that some of you
have had, I thought maybe what I would do here is
somewhat try to focus on a couple of those issues
because I think they are important.
You know, to begin with, I think that we have to look at this matter in terms of what the constitutional requirements might be and secondarily what the requirements of the Voting Rights Act might be. And in that regard, if we can say that there is an impact, a noticeable impact on African-Americans or Latinos, that we have to look at the question of whether or not there might be retrogression or whether or not there might have been a way of narrowly -- more narrowly tailoring the actual statute that we're talking about.

Now, I think that for a number of just very clear reasons to me we would have a negative impact on people of color. I think -- number one, I think you've heard many people say today that indeed that there's a lower percentage of individuals who have driver's licenses or photo identification cards and I think that's a fact.

I think we've also done -- when we did one of our racial profiling studies with the Department of Public Safety or data, one of the things we were able to determine is that the actual car ownership data indicated that minorities had less access to automobiles and owned fewer automobiles and more were without automobiles at all in their home,
and so this creates more of a burden in terms of the ability to travel.

I think also one of the other things that I see in the bill is the -- is the affidavit. So if you look at the affidavit and the affidavit that you have to sign when you don't have the proof according to the bill, that affidavit makes you make a representation that you are -- that you are eligible to vote right then and there. And I know the problems I've had getting people to register to vote who might have had felony histories or what have you, there's a little intimidation. And with the nature of the wording, I think it's very intimidating and threatening and will make individuals feel challenged to sign that particular affidavit.

I think also there's the issue with communicating the new requirements of the law so people can be prepared when they go to the polling place in order to vote, in order to be able to vote effectively. And because I think of the nature of how it's been done with the likelihood of not being able to reach all voters the way they need to be reached, I think that when the voters turn out and the ones who will be rejected on election day I think will show -- it will show clearly there will be a disparate impact.
on racial and ethnic minorities.

    And one of the things that I can say
that also I feel will be a major problem is that --
and I went down to Venezuela to be an official
election observer down there, and I saw people in
lines for eight hours, you know. And they have all
these incredible requirements there where you've got
to give your thumb print. You have untrained people
trying to determine if your thumb print is the same
one that's in the computer, you have to show different
forms of identification, and it takes a long time to
get through those lines. And so you have people in
those lines -- they start lining up like 3 or 4 a.m.
in the morning.

    And I think -- not that this would be
that burdensome, but I think that we already see in
too many minority areas where there's not enough
ballots, there are not enough voting machines at the
specific locations, the lines are already too long,
it's already a major problem. And I think when you
add this kind of requirement there, it's going to make
it a lot longer and make it more difficult for folks
to desire to stay and to be part of the process. So I
think indeed that -- for many reasons even beyond
that, I think we would have a clear discouraging or
discouragement of African-American voters.

Now, there are a couple of things I wanted to mention here. I think that when you look at the law -- when I looked at the bill analysis, the bill analysis talked about problems with registration. It said that because no identification is required during registration, it makes it possible or likely that you will have people who can get -- who can get voter registration cards who may not actually be the person.

And so the first thing that grabbed out of me was well, if there is a problem -- but I don't think it's really been shown -- but if there is a problem, why isn't it addressed at the point where there is a problem? And if the point of the problem is at registration, instead of something that will be discouraging to people who are registering to vote, then that is where the focus would be, in my mind.

The affidavit again is intimidating. I think I mentioned the long lines.

Another thing is when we looked at the categories of information for the nonphoto ID items that are provided for in the bill, there are a couple of things that leap out at me: The general provision that would allow a catch-all because when you're
writing a bill, it's kind of hard to envision and know all the different circumstances where indeed a situation where a person might present something that should be considered proper proof. And I think the fact that there was kind of a laundry list provision that's deleted and not allowed to be used, I think that is problematic.

Secondarily, the list of items that are actually there are not really properly comprehensive, in my mind, and they really would discriminate against a number of individuals because of the types of items that are there. And some of the things that are there are kind of private, some things that people may not want to produce or show someone at a polling place. And so I think that by the nature of the documents that are listed there, that they're not reasonable in terms of how they're fashioned.

And the bill doesn't state exactly how it will be executed. It leaves a lot of things up to be determined later by the Secretary of State. So exactly how the law will be applied, how it will be interpreted will be a big problem.

One of the things that we've seen around the state is -- and we've done -- we've had about five different hearings around the state relating to
election irregularities, and we've found just incredible things all around our state to indicate there's still a real problem with folks understanding and appreciating minorities being able to vote.

In this last election cycle, we saw a particular problem with Election Officials. Because of the different ways Election Officials are selected, we had a number of people that were rejected and had real conflicts with individuals who were Election Officials.

And I might say it was really broad-based kinds of things that we've seen over the last few years. We've seen hate crimes where white supporters of a black candidate had their home burned. We've seen situations where people were purged from voting lists when they should not have been. We've seen the improper use of off-duty police officers, the use of mailboxes to put intimidating communications. We've seen a lot.

QUESTIONS FROM SENATE FLOOR

SEN. WENTWORTH: Thank you. The Chair recognizes Sen. Ellis of Harris.

SEN. ELLIS: Thank you, Mr. President, and thank you President Bledsoe for being so patient. I know you were here earlier today. And you were
wrapping up your testimony, you can submit it, of course. I have some questions I want to ask, but if you just have some summation that you want to add in addition to your testimony, I'd like to hear that.

MR. BLEDSOE: Sure. Thank you, Senator.

What I was trying to complete was the types of things that we have found around the state in our inquiries in terms of both our -- every election we have a group of lawyers that volunteer and run an 800 line, and we take calls from around the state. And we also have had those five hearings, a couple in Houston, Dallas, Fort Worth, Texarkana out in East Texas, and we found that people were not allowed to tender -- challenge ballots according to law. We've seen individuals that were soldiers in Fort Hood who had their voter registrations who were wrongfully purged from the voting rolls. We've seen just a number of problems that have disenfranchised African-American voters, and it still is a major, major problem throughout the -- throughout the state but particularly in the urban areas and East Texas.

SEN. ELLIS: Thank you. Mr. Bledsoe, some people would say that the Voting Rights Act is no longer needed, that it's a thing of the past particularly as it relates to Texas. Can you cite
some examples or give reasons that would show why we
still need the Voting Rights Act protection in Texas?

MR. BLEDSOE: Well, you know, we have
had a number of -- you know, I'll thank Attorney
General Abbott. You know, he assisted the folks in
Prairie View when a situation arose where you had a
number of people who were wrongfully purged from the
rolls who could not vote in the city election, and you
also had I think about a thousand ballots -- I mean
voter registration applications that were just sat on,
that no one -- just sat on, so the folks were not able
to vote in a particular election, but they were found
there in a county office, and they were -- and the
Attorney General had them file them. But, you know,
that was a clear violation of the Voting Rights Act.

And we have the situation I mentioned
earlier in Wharton County where an African-American
candidate for Sheriff had a white couple that were
working on the campaign, one was a County
Commissioner, and they received a number of hate crime
calls, and their home burned down as a result of that.

You know, we've had problems in Fort
Bend County with there being changes in polling places
much too late and not properly publicized in the
newspaper. We've had problems there in terms of
individuals who wanted to file -- challenge ballots, and they were not allowed to. We've had problems there where people were sent to the wrong polling places and they ultimately could not vote.

We've had all the problems in Dallas County where indeed there are too few ballots that have shown up a number of occasions in Dallas County, and so the lines get long, people get frustrated, people leave.

We've had people hire off-duty police officers, and that's in conjunction with making contact with an African-American newspaper, having articles in the newspaper talking about if you have an outstanding warrant, you're going to be arrested. And so you go and hire all the off-duty police officers and stand them outside the polling places to intimidate individuals from voting.

So I mean it's just -- there's just a huge number of things that have occurred and have occurred in most places around the state.

SEN. ELLIS: Mr. Bledsoe, is there a well-documented history of voter suppression that is specifically related to race and ethnicity in Texas? And how would this voter ID law fit into that history?

MR. BLEDSOE: Well, there is a long
history, and our state still hasn't come to where our state needs to be. You know, that's one of the issues before the United States Supreme Court in a case that the NAACP is involved in, and it's going to be argued in April of this year relating to the need for the continued existence of the Voting Rights Act.

I think when we look at the history and the continued problems that we've had in a number of areas and fronts and we see the problems with language voters, we see the problem with racial minority voters, those things, the problems are never -- never alleviated because we've continued to have voter intimidation.

And when you have voter intimidation -- and the record is really replete. I mean, I don't think there's any question that when we look at what's occurred and -- let's take a look at Harris County. This is kind of an unpopular thing to say, but I know there's a coalition that's running a group countywide, and the only ones to lose are really minority candidates that makes you think -- and I talked to Dr. Davidson about that. That cries out to me is there something wrong with that particular election there when you've got a coalition of people running. And people like Goodwill Pierre or people like the
District Attorney actually lose, they happen to be people of color, and so that makes you want to look further at those issues.

But we do have the problem all around the state. It continues to be a problem. We've made gains. It's not the same state it was in 1960, but it's not nearly where it needs to be.

SEN. ELLIS: That's an interesting comment, and I might add a bipartisan comment because in Harris County where there was a Democratic sweep, for some strange reason the candidates that didn't win in that sweep were the candidates of color primarily.

MR. BLEDSOE: And there were also problems when there were -- when there was a Republican sweep with the Republican blacks not winning as well. So that's been a problem both ways in Harris County.

SEN. ELLIS: How would this voter ID law, this specific law -- I know you've looked at the statute -- discriminate against people of color?

MR. BLEDSOE: Well, what this specific law will do is it will clearly reduce the minority vote, both because of the pressure that will be put on the polling place that will cause the longer lines, that will give more discretion to -- it will give a
lot more discretion to Election Officials that are already having problematic relationships with people of color, and it will -- it has intimidating provisions that will make individuals take a look at the law and say "Well, I'm not sure I want to sign that document." And it will prevent people who were there in good faith from being able to come up with the right information to be able to vote because of the great burdens it will place on them.

I know that I got -- I visited with a former official in the Department of Justice Civil Rights Division. They indicated like how in Presidio County it's 3800 square miles in the county and the high number of language minorities in the county and the real difficulty in that county in making it to a location to get a driver's license. So -- or to get a photo identification. So there will be a real problem that way. So I think it clearly will cause retrogression.

But secondly, the other point that I wanted to make was that not just the Voting Rights Act and the retrogression, it clearly will show a drop in the vote -- in the African-American vote, but I think that it could have been a lot more narrowly tailored. It could have been focused specifically on the problem.
that's at hand, that's at issue, and it's not focused on the problem at hand in the kind of narrow way that I think it should. So it unnecessarily tramples upon rights of minorities that it doesn't need to.

SEN. ELLIS: I think I saw you in the room when the testimony was given from the person from AARP. And despite some of the questions that were asked from present counsel, I assume that there will be an attempt to maybe exempt the elderly out of this bill in this great deliberative body. After being here 24 hours, there might be an attempt to do that.

My question is if the legislature does decide to exempt certain classes of voters, like maybe seniors or some others from this in bill, would that direct -- in your judgment, would that direct an even greater amount of its potential to disenfranchise voters of African-American and Hispanic ancestry?

MR. BLEDSOE: Well, I will say that -- I don't know if I'll say it will be greater, but it won't dilute it because the impact that would be illegal or unconstitutional will be just the same because the -- you'll be taking out one group, but when you look at those who are younger than -- younger than 65, you have an enormous problem with racial and ethnic minorities.
I think in one sense it makes it worse in that the other group that might be -- one of the other groups that might be unnecessarily adversely impacted will no longer be adversely impacted. So it will be primarily blacks and browns that will be negatively impacted by the bill. So I don't think that that would go far enough. There would still be a deleterious impact on the African-American community.

SEN. ELLIS: Did you see the press accounts from '05 and '06 of the Attorney General's highly publicized campaign against voter fraud?

MR. BLEDSOE: I haven't actually seen them. I've discussed some parts of them with different individuals.

SEN. ELLIS: If you can, I just want to get a sense of based on what you know about that anti-voter fraud campaign, that the Attorney General used materials that included images of sickle cell stamps based on press accounts and photos of African-Americans to illustrate signs of voter fraud. And my question is, what does that tell you about the state's attitude and enforcement of voter fraud? And did the conduct and targets of those prosecutions fit into a pattern of voter suppression in Texas?

MR. BLEDSOE: Well, I think it's very
disappointing that that would be used because
obviously that makes a suggestion. Whether it was
intentional or not, one cannot know, but it's clear
that you send a certain signal when you use things
like that. And something so innocent as a sickle cell
stamp to be used there would be completely
inappropriate, and I don't understand how that could
be there. So obviously that would be offensive and
problematic.

And I do know that -- I think the data I
looked at in terms of the prosecutions were 18 out
of 19 or something along those lines were racial and
etnic minorities, and that is one of the reasons why
we opposed the bill. When Representative Wolens had
put the bill together, you know, we were one of the
groups that vehemently opposed it because what we
feared at that time when he put that bill forth was
that it was going to be disparately used against
racial and ethnic minorities, and indeed I think that
was probably the case.

SEN. ELLIS: One last question. You may
have heard some of the testimony from Indiana and
Georgia from the experts of representatives that were
here. So what I want to ask you is you suggest the
photo ID law would suppress the African-American
turnout, but some voter ID advocates claim that a voter ID law does not suppress turnout and even claim that turnout increased in Indiana and Georgia in '08 and that it was caused by voter ID laws compared to the 2004 turnout when there was no voter ID law in place in those states.

Obviously turnout can vary a lot between the election cycles based on a lot of factors like who is in the race, but my question is, did African-American turnout in Texas increase in '08 without a voter ID law? And do you think the reason might be the same as the real reason for reports of higher turnout in Indiana and Georgia?

MR. BLEDSOE: Well, the African-American turnout did increase greatly this past election in the State of Texas, and obviously it wasn't due to a voter ID law, and I think it increased greatly nationally, including many states that did not have voter ID laws. So I think it really would be completely inaccurate to say that the voter ID laws had anything to do with an increase.

I do know that they did cause folks to be turned away from the polls in Georgia from my communications with the Georgia State Conference. The reason why you had the increased turnout was the Obama
candidacy joined with an effective Obama campaign that
in many ways would be very hard to duplicate because
it wasn't just the Obama candidacy, but you had a
great deal of finances assisting the folks in getting
out votes in different communities.

So there was a real green element to
that turnout as well. So that went well beyond any
voter ID law. And I think that when the proof is in
ultimately there will be absolutely no question that
the voter ID law will have a negative impact on the
African-American vote in Georgia and I would presume
Indiana as well.

SEN. ELLIS: Mr. Bledsoe, thank you for
being so patient and being here.

To all Members present, thank you. And
with that, good morning. I'm signing off and good
night.

MR. BLEDSOE: Thank you, Senator.

SEN. DUNCAN: Thank you, Mr. Bledsoe.

The queue is clear. You're excused.

MR. BLEDSOE: Okay.

SEN. DUNCAN: We appreciate your
presence today.

TESTIMONY BY ERIC NICHOLS

SEN. DUNCAN: The next witness will be
Eric Nichols with the Attorney General's Office.

Mr. Nichols, if you'll approach? Mr. Nichols is being presented as a resource witness. If you'll state your name and the office that you are with, please?

MR. NICHOLS: Thank you, Mr. Chairman.

Eric Nichols, Deputy Attorney General for Criminal Justice with the Office of Attorney General.

SEN. DUNCAN: Mr. Nichols, you have ten minutes, and then we'll open it up for questions.

MR. NICHOLS: Thank you, sir.

Regardless of the hour, I'm pleased to appear before the Committee of the Whole, and I've had the opportunity to speak with many of you individually as well as Senate and House Committees on the topic that I've been asked to be a resource on tonight, which is the election code enforcement activity that has occurred at the Office of the Attorney General.

By way of background, I've spent a good deal of my legal career working in the legal justice system, previously on the federal side as an Assistant United States Attorney and now on behalf of the State of Texas.

As part of my duties at the AG's office, I oversee the agency's Criminal Justice Divisions, including the two divisions of that office that are...
principally responsible for matters arising under the Texas Election Code that come to our attention. Our Criminal Investigations Division investigates election code cases that are referred to our office. The Criminal Prosecutions Division brings criminal prosecutions and election code cases on behalf of the state when an investigation reveals facts that warrant prosecution.

Again, I understand from discussion among the committee members earlier here today that I'm here to be a resource on the issue of the election code enforcement that's occurred through our agency, and so I'm prepared to give you some historical data. But before I do that, I want to provide three caveats that I've provided to many of you before, and I apologize to those of you who have heard these caveats, but I think they are important to put the data in context.

First, it's important for anyone looking at data that comes out of our office to keep in mind that our agency's election code enforcement efforts are entirely referral driven. What does that mean? We do not currently have nor have we ever had any officers, investigators, prosecutors or any kind of officers, agents or employees watch, supervise or
otherwise monitor a polling place, voting station or
voter roster during any election in this state.

We, therefore, depend on third parties
to make us aware of alleged election code violations.
Accordingly, if a third party does not for whatever
reason detect a potential violation of the election
code or if they do detect a potential violation of the
election code but choose not to file a complaint or
make a referral to our office, then our office is
obviously unaware and unable to investigate what would
have been the underlying subject matter.

Referrals to our office on potential
election code cases come from three primary sources.
As you've heard, the Secretary of State is the state's
chief elections officer. Under the election code, the
Secretary of State takes questions and referrals from
a variety of sources, including members of the public.
The Secretary of State's Office reviews those matters,
and under the statute when they determine that there
is "reasonable cause to suspect that the alleged
criminal conduct occurred," the SOS then refers the
matter to our office for further investigation.

There are also provisions in the
election code that allow concerned local registered
voters to file complaints about alleged wrongdoing
directly with our office by filing sworn affidavits. And then finally the third, another primary referral source for election code cases, are local elections officials and local law enforcement.

Given our office's role in coordinating on law enforcement generally with local law enforcement agencies and officials, including local, District and County Attorneys, Sheriffs and Police Departments, we receive direct referrals from these local officials.

The second point for context is this: The legislature -- this legislature has given the Attorney General's Office direct authority and jurisdiction to prosecute election code cases, but our authority and jurisdiction in this area is not exclusive. Local prosecutors at the county level also have jurisdiction to prosecute election code cases, and they do, in fact, as you've heard in testimony today, exercise that jurisdiction.

We do, in fact, coordinate with local prosecutors. And as in the case of that Dallas County case you heard about earlier, we do not generally move forward on a case if a local prosecutor decides -- or declines to prosecute.

A quick review of available new stories
in addition to what you've heard today shows that from Hidalgo County to Harris County there is local election code enforcement going on by local prosecutors. With all this in mind, to get a complete picture of all of the prosecutions in Texas under the election code would require you to collect data from all 254 counties. So I can only give you a piece of the statewide picture here tonight.

The last context point that I always give, and I apologize again for those of you who have heard it, is that for obvious reasons of law enforcement and respecting the rights of those who may be under active investigation or prosecution, I can talk publicly in terms of numbers and largely general fact scenarios rather than talk in a public hearing about specific investigations or cases.

So with all that being said, I'd like to provide you-all with historical data that dates from August 2002 to present. In that time period, the Office of Attorney General has received 192 referrals of potential election code violations from the three sources I mentioned previously. There have been some statements made before the committee about the Office of the Attorney General engaging in a lengthy statewide investigation. Those comments are not quite
accurate in terms of what our office does in terms of reacting to referrals. We only act upon referrals that we receive, and as you would expect having given the office the authority and jurisdiction to investigate these matters, our charge is to thoroughly investigate the matters that come to our attention.

Those 192 referrals break down as follows by source: 82 came from the Secretary of State, 44 came from voters in the method I described earlier, and 66 came from local officials and law enforcement.

Furthermore, those 192 referrals break down by the type of election as follows: 82 involved Party Primary Elections, 33 involved General Elections, and 77 involved other Local or Special Elections. And so only about 15 percent of the referrals to our office deal with issues arising in General Elections, and 85 percent arise in either Party Primary or Local Special Elections.

Now, of course, once these investigations are conducted by our office, a significant number of these cases are going to be determined to not rise to the level of an election code violation either based on the facts or law. However, these 192 referrals have to date resulted in