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

IN RE: §
CONSIDERATION OF §
SENATE BILL 362 §

COMMITTEE OF THE WHOLE SENATE

TUESDAY, MARCH 10, 2009

BE IT REMEMBERED THAT AT 12:38 p.m., on
Tuesday, the 10th day of March 2009, the above-
entitled matter was heard at the Texas State Capitol
Senate Chamber, Austin, Texas, before the Committee of
the Whole Senate; and the following proceedings were
reported by Aloma J. Kennedy, a Certified Shorthand
Reporter of:
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EXHIBIT 2

Shubin

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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 Sepehri 
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