SEN. FRASER: -- "votes to steal the
election in a democratic primary in Dallas, Texas,"
and he brought that forward. And you're one of the
persons that voted for that --

SEN. ELLIS: That's correct.

SEN. FRASER: -- bill, as I did --

SEN. ELLIS: Senator, you --

SEN. FRASER: -- to address voter fraud.

SEN. ELLIS: Are you aware of how a

puzzle works?

SEN. FRASER: I'm sorry?

SEN. ELLIS: Are you aware of how a

puzzle works, a puzzle, p-u-z-z-i-e, puzzle?

SEN. FRASER: Puzzle?

SEN. ELLIS: Yes.

SEN. FRASER: Well, if you're asking,

maybe I don't.

SEN. ELLIS: If you take a certain piece
of what someone has said out of context, Senator, what
you're doing is distorting what they intended to say.

So here is my point: Your bill does not touch mail-in
ballots. You used a quote by Steve Wolens to try and
augment your position. Your bill does not touch
mail-in ballots. Most of the cases of fraud that your
witnesses are going to talk about are going to involve
mail-in ballots, but this bill does not do anything to touch that.

SEN. FRASER: Again, you're being subjective. Let's wait for the objective testimony of the witnesses. You're being a good lawyer and projecting what the witnesses might say. And I would suggest probably the thing we should do is listen to the testimony that's given, and you will have the right to question them. But I think the witnesses are going to make a very clear case that we've got a huge problem in Texas. There's a huge gap in Texas law. There's every possibility for someone to walk in and vote -- Craig Estes could take your voter ID and register himself in Houston in a ballot box that they don't, you know, know him. And he could register as Rodney Ellis and he could vote for Rodney Ellis. That could happen if, you know --

SEN. ELLIS: Senator, in your mind, just based on your best guess, do you think that this bill would have a more positive impact on one party or the other in terms of Democrats or Republicans?

SEN. FRASER: I'm not going to project about who might benefit from the passage of this. But I wish you would listen to the results in Georgia and Indiana. And I don't want to put words in their
mouth, but I've seen the numbers. The ones in Georgia
and the ones in Indiana, the increase, the greatest
increase came in Democratic votes, it came in
minorities. And I hope -- in Texas my hope would be,
I want African-American votes to increase in Texas.
That's my goal. And if I can create something for
your voters --

SEN. ELLIS: This bill is going to
increase the number of African-Americans and Hispanics
that vote in Texas?

SEN. FRASER: Absolutely.

SEN. ELLIS: That's what you believe?

SEN. FRASER: I do believe that; yes, I
do.

SEN. ELLIS: You made reference to the
last election in terms of the turnout increasing. Do
you think that that record increase had anything to do
with Barack Obama being the Democratic nominee and
Sen. McCain, John McCain being the Republican nominee?

SEN. FRASER: Let me ask you this a
different way. Did Barack Obama run in Illinois and
Indiana both? Did he run in both states?

SEN. ELLIS: Senator --

SEN. FRASER: Was he from -- since you
asked me the question, I get to answer.
SEN. ELLIS: I can -- 
SEN. FRASER: You said was the --
SEN. ELLIS: I can assure you the people in Illinois knew Barack Obama was going to win the State of Illinois. I can assure you that.

SEN. FRASER: You're saying they didn't feel comfortable voting for him because they knew him?
SEN. ELLIS: No, I'm not saying that at all. Let you ask you this: Do you know what the increase in vote was in Texas?
SEN. FRASER: All the questions you're covering is the same thing that was asked about the last four -- you're the fifth person.
SEN. ELLIS: 600,000 additional votes.
SEN. FRASER: We're going to have witnesses from Indiana and Georgia --
SEN. DUNCAN: Senators, you're taking over each other and the court reporter only has two hands.
SEN. ELLIS: Okay. You all right?
SEN. FRASER: I'm going to vacate the premise so you can talk.
SEN. ELLIS: I think I've completed my questions. I think I've made the point. I would like to ask the author of the bill about a historic bill
that he's carrying that in my judgment would negatively impact minority voters in Texas.

SEN. FRASER: As you know, the way this system works, we have witnesses come in, they tell their story, you get to ask them questions. When that's over, I'll close, we'll have a vote. It will come to the floor. If I'm successful, once we get on the floor and I lay it out, we get to do this again. And I would suspect at some point you and I will have a discussion. But I would like for you to ask the questions of the expert witnesses, because I think you're going to be shocked at what they say about what the impact would be on minority voting in both those states, what happened and how it would be increased.

SEN. ELLIS: All right. Thank you.

SEN. DUNCAN: Sen. Davis?

SEN. DAVIS: Sen. Fraser --

SEN. FRASER: You didn't get the rule about freshmen?

SEN. DAVIS: No. I'm sorry. I didn't get that rule.

(Laughter)

SEN. FRASER: I'll be glad to accept your questions.

SEN. DAVIS: Thank you.
Would you agree that the provisions of the Carter-Baker comprehensive proposal are proposals that you are using in support for the legislation that you have introduced on this issue?

SEN. FRASER: Senator, I took the information that I read -- I read the report; I read what they included in print; I read their press release -- I took my highlighter and highlighted things that came from either what they had written down and they put their name on, and I repeated and read. I didn't project what I thought Jimmy Carter was thinking or what Jim Baker was thinking. I read what they put in print in that, and that's what I did today. There is going to be someone here hopefully, if we ever get to that point, from that Commission that you can ask that exact question.

SEN. DAVIS: You made a statement a moment ago that in this legislation that you have proposed, you are addressing the recommendations of the Carter-Baker Report for voter ID, did you not?

SEN. FRASER: Say that again.

SEN. DAVIS: You made a statement previously, when you were speaking with Sen. Ellis, that you are addressing the recommendations of the carter-Baker Report for purposes of proposing your
voter ID bill?

   SEN. FRASER: I am proposing a voter ID law and laying it out. I used as a reference a document that is in the public spectrum, something that I've pulled off -- I think off the Internet, of that report. I highlighted a statement that was made, and I read that statement.

   SEN. DAVIS: And you mentioned that you highlighted not only that report but you also highlighted the editorial of February 3, 2008, titled "A Clearer Picture on Voter ID." Correct?

   SEN. FRASER: What was the last part of that? But what?

   SEN. DAVIS: You mentioned a moment ago, when you had your highlighter out, you went through the report, the Baker-Carter Report. You also went through an editorial that was written by both of them in February of 2008, and you also made highlights to that editorial?

   SEN. FRASER: I highlighted a lot.

   SEN. DAVIS: But you highlighted those?

   SEN. FRASER: Well, I can get my book out and I can show you what I highlighted, yes.

   SEN. DAVIS: I'm curious as to whether, when you had your highlighter out, you highlighted
this particular statement that was made in their editorial, that the groups least likely to have valid photo IDs are women, African-Americans and Democrats. Did you highlight that statement?

SEN. FRASER: I am not advised. I'm sorry. I don't have that. I did not say that. Did you hear me say that?

SEN. DAVIS: No. I'm asking you whether you highlighted that.

SEN. FRASER: I'm not --

SEN. DAVIS: Do you remember reading that?

SEN. FRASER: I'm sorry?

SEN. DAVIS: Do you recall reading that from their editorial, that the groups least likely to have valid photo IDs are women, African-Americans and Democrats?

SEN. FRASER: The answer is yes. And again, it's the question that Sen. Ellis just asked, is that it was included in the paragraph above and below. But I think I do remember seeing that in that editorial.

SEN. DAVIS: Do you recall also seeing their statement that the current crop of laws, including those that we've been discussing today --
SEN. FRASER: Senator, I'm sorry. You know I have a hearing problem, and I'm only getting about half of what you're saying. So if you can --

SEN. DAVIS: I'm sorry. I will speak up.

SEN. FRASER: I have trouble -- I'm sorry -- sometimes with women's voices, and I'm just not getting it.

SEN. DAVIS: I will speak up.

Do you call reading in that editorial that they also stated that the current crop of laws are not being phased in gradually and in a fair manner that would increase rather than decrease voter participation?

SEN. FRASER: I'm not getting it. I'm sorry.

SEN. ELLIS: I thought I heard my wife's voice. Was she calling me?

SEN. FRASER: My wife says this is a trained response.

SEN. DAVIS: Would you like me to repeat my last question?

SEN. FRASER: Please.

SEN. DAVIS: Do you recall reading in the editorial a statement made by Secretary Baker and
former President Carter that the current crop of laws
that are being put in place by states are not being
phased in gradually and in a fair manner that would
increase not reduce voter participation?

SEN. FRASER: No, I do not remember
seeing that.

SEN. DAVIS: You also stated that you
read the report and that you highlighted particular
provisions of that report in formulating your bill
that you have proposed today and your reasons for
supporting that bill.

SEN. FRASER: I don't think I said that
at all. I didn't read that report in formulating my
bill. The bill that I laid out is very, very
straightforward. All it says is that when Wendy Davis
goes to vote, they want to know -- they want to see
your picture ID or other forms of identification to
verify that you are who you say you are and that --
it's not rocket science.

SEN. DAVIS: When you began your
comments on the floor today in laying out your bill,
you quoted from the Carter-Baker Report as well as
from the editorial that I read from a moment ago. In
answering Sen. Ellis' questions, you said you were
addressing the recommendations of the Carter-Baker
Report in implementing your proposal for voter ID.

SEN. FRASER: I don't think I said that.

I said -- I think I referenced things that were said in that report. I referenced the Supreme Court Justice, John Paul Stevens, again a left-leaning Supreme Court Justice that wrote the majority report that validated the Virginia -- or the Indiana law that put in place a strict photo ID. I referenced that that had been done, their comments. I referenced the Commission, things that they had said. I referenced the bill that was proposed by Rep. Steve Wolens, a Democrat in Dallas near your area that was -- or may be in your district, where he suggested that with vote harvesting and voter fraud, those are all stories that were -- that I had data on.

SEN. DAVIS: In referencing the Carter-Baker Report, I wonder if you came across this statement by them: "To prevent the ID from being a barrier to voting, we recommend that states use the registration and ID process to enfranchise more voters than ever." Do you recall that?

SEN. FRASER: Why don't you ask that question of the expert witness that I have informed the last five Senators that are coming up, that I don't have any idea what she is going to say. She is
going to be under oath, and she would love to answer your questions that you're asking, and I think that is where we should go from here.

SEN. DAVIS: Well, for purposes of discussion or furthering our discussion and my questions for you, let me read some of the recommendations that Carter-Baker report made.

SEN. FRASER: Are you going to ask me questions --

SEN. DAVIS: I'm going to ask you questions.

SEN. FRASER: -- or are you going to -- you have the right at any time to put stuff on the record. But you --

SEN. DAVIS: I'm going to ask you questions.

SEN. FRASER: -- had asked the Chairman if you could ask me questions.

SEN. DAVIS: I'm going to ask you questions.

SEN. FRASER: Thank you.

SEN. DAVIS: "States should play an affirmative role in reaching out to non-drivers by providing more offices . . ." That's one of the recommendations in this report. Does the bill that
you have placed in front of us today on voter ID have
an affirmative role for states in recommending that
they reach out to non-drivers by providing more
offices?

SEN. FRASER: I'm sorry. I'm not even
going close to following the question you're asking.
The bill that I'm laying out today says that when
Wendy Davis walks into the voting booth, you've got to
prove that you're really Wendy Davis. It's that
simple.

SEN. DAVIS: And the bill does not
include a request of the state that it open more
offices for the purposes of obtaining a photo ID for
non-drivers, it does not include that proposal.
Correct?

SEN. FRASER: They can use non-photos.
I mean, there is no provision right now, there is
nothing in the bill that every person in the state
could not comply with, because you can use a piece of
mail that had been mailed to you, your library card.
There's a long, long list of things that you could
use. You could even use as your piece of
identification the mail that the registrar sent to you
for your voter registration. That's a form of
identification.
SEN. DAVIS: And I'm going to ask you about that list in a moment. Let me ask you another question about what your bill includes. Does your bill include a proposal that the state should create mobile offices for the purpose of reaching out to persons without photo ID, to create those photo IDs?

SEN. FRASER: Would you ask that question again, please?

SEN. DAVIS: Yes. Does the bill that you're proposing include a request of the state that they create mobile offices that would go out into the communities for purposes of helping voters obtain photo IDs?

SEN. FRASER: Were you here earlier when that question was asked by another senator?

SEN. DAVIS: I do not recall that question being asked. I would appreciate it if you would answer it.

SEN. FRASER: The Secretary of State has been asked to come here. The Secretary of State will implement this transaction. The wording of the bill that is in the bill is very clear of what we would ask them to do. The implementation of that would be, you can ask the Secretary of State, please.

SEN. DAVIS: Okay. But I'm asking you
if your bill includes that proposal?

SEN. FRASER: My bill has language that clarifies that there will be an education program of the people to implement this bill. It lays out the instructions on that, but it will leave it to the Secretary of State to implement.

SEN. DAVIS: Does your bill contain a proposal that would provide the ability for voters to register and to provide photo IDs to those voters free of charge?

SEN. FRASER: Try it again. I didn't get it.

SEN. DAVIS: Does your bill include a proposal that would allow voters to register and be provided photo IDs free of charge?

SEN. FRASER: The photo ID is free of charge.

SEN. DAVIS: It is free of charge?

SEN. FRASER: Yes.

SEN. DAVIS: Who is going to pay for that?

SEN. FRASER: We are advised that -- first of all, that there are very few people that would need that, is that the bulk of the population of Texas already has a driver's license or a photo ID.
And we're advised that, you know, the cost of that would be implemented through -- I guess it's DPS. So it is built into the budget.

You know, I know you're new to the Legislature. But the fiscal impact on the bill, that is determined if there is a cost to the state. And they said there is no impact, because it could be absorbed in current budget.

SEN. DAVIS: Believe it or not, I understand that fiscal impact is based on whether there is a cost to the state. What I'm asking you is if your bill proposes free voter ID cards that could be made to anyone who requests them and whether there has been a cost put to that proposal?

SEN. FRASER: I'm sorry. I'm getting members, people talking to me. Try it again, please. I can't hear you.

SEN. DAVIS: I'm asking you, in your bill, the bill that you've authored, the bill that you've laid out, the bill that you are standing in front of us defending today, is there a proposal in your bill that anyone who wishes to register to vote would be provided a voter ID card free of charge?

SEN. FRASER: The answer is yes, that anyone that is a registered voter will be given a
photo ID free of charge. So I think the answer to your question is yes.

SEN. DAVIS: And yet, do you have any idea how many people might come forward and request a free voter ID?

SEN. FRASER: I would suggest you ask the Secretary of State that.

SEN. DAVIS: I will. But I'm asking you, because it's your bill. I'm asking you. Do you have any idea?

SEN. FRASER: And I'm responding to you that I'm going to punt to the Secretary of State because they're the ones that keep that data.

SEN. DAVIS: Was that question asked of you by the LBB when they were preparing the fiscal note for your bill?

SEN. FRASER: We didn't talk to LBB. That's not the process.

SEN. DAVIS: Okay. Turning to Section 63.0101, Sections (a) and Sections (b) of your bill, would you agree that this list of proof of identification that can be provided to a poll worker includes a multiple of standards that those poll workers could apply?

SEN. FRASER: Do I agree that there's a
lot of choices?

SEN. DAVIS: Yes, a multiplicity of standards --

SEN. FRASER: A multitude of choices.

That I think is one of the beauties of the bill, is
that there's a lot of ways that people could identify
themselves.

SEN. DAVIS: Okay. In reading the
Carter-Baker proposal, was it your understanding that
the proposal they advanced was the creation of a
universal voter ID that would, No. 1, provide more
offices for people to receive those IDs, including
mobile ones; No. 2, that would allow the registration
and free federal ID for anyone wishing to seek one;
and that there would be much less discrimination
against minorities if there were a single uniform ID
rather than poll workers applying multiple standards?

SEN. FRASER: I'm not advised. I can't
speak for the commission. We have an expert witness
who will be here in a minute, and I will be glad for
you to ask her.

SEN. DAVIS: Would you agree that if
those proposals were put in place, that it would
create costs in implementing such a system?

SEN. FRASER: Again, Senator, we have a
system here where they look at the bill, any potential
cost to the state. They come back with the fiscal
impact on that. And the statement we received back
from, you know, on the fiscal impact was no impact.

SEN. DAVIS: Thank you. I'm going to
complete my questions for now in order to give the
court reporter a break. Thank you, Sen. Fraser.

SEN. FRASER: Thank you.

SEN. SHAPLEIGH: I've got three
exhibits.

SEN. DUNCAN: Members, we have several
folks who want to talk. And we've been going now for
about an hour and 45 minutes, and I want to try to
pace the court reporter. Before we go to a short
break, though, Sen. Shapleigh had some exhibits he
wanted to introduce. So we'll do that and then take
a -- we'll be at ease for a few minutes.

Sen. Shapleigh.

SEN. SHAPLEIGH: Thank you, Mr. Chair.

If I could, as Exhibits 11, 12 and 13,
respectively, the copy of The New York Times op ed by
Baker and Carter, '05; copy of Royal Masset's quote;
and editorial from the quorum report and The New York
Times' editorial of '08, all discussed on the floor.

SEN. DUNCAN: Okay. They will be placed
in the record.

Members, have those copies been provided to the Secretary?

They're on their way? Okay. Thank you.

Members, we will take a -- we'll stand at ease for approximately 10 minutes. We'll reconvene at 4:45.

(Exhibit Nos. 11, 12 and 13 marked and admitted)

(Recess: 4:36 p.m. to 4:51 p.m.)

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

If those in the gallery could be seated and we could have order in the chamber.

Sen. West.

SEN. WEST: Thank you very much, Mr. Chairman.

Sen. Fraser, I'm going to try not to be repetitious. Can you hear me now?

SEN. FRASER: If you use the Barry White voice, I think we're okay.

SEN. WEST: The Barry White voice.

SEN. FRASER: You know, I've told you that before --

SEN. WEST: All right.
SEN. FRASER: -- that that's your best Barry White voice.

SEN. WEST: Well, I --

SEN. FRASER: I've got your vote. I can hear you well.

SEN. WEST: Barry was able to -- has been very convincing at times. Can I convince you to pull this bill down?

SEN. FRASER: Now yet.

SEN. WEST: Oh, okay. All right. I want to go through the bill with you. On Page 3 of the bill, Line 1 --

SEN. FRASER: If you would hold one second so I can get a copy of it.

SEN. WEST: Sure.

SEN. FRASER: You're reading from what?

SEN. WEST: Page 3, Lines 1 through 4.

SEN. FRASER: I'm not sure ours is going to match up, but we'll try. Page 3 -- where are you referencing? Okay. There we go. Okay. That's what I needed. This is what we're used to.

SEN. WEST: Okay. We talked about the use of identification.

SEN. FRASER: Yes, sir.

SEN. WEST: If you're going under
Subdivision (1), you say, "one form of identification listed in 63.0101(a)," and if you're going to go under No. (2), you say two forms of identification under 63.0101(b). And I'm trying to -- why the difference between the two types of identification in terms of the number that you have to use for purposes of identification?

SEN. FRASER: Well, I think the easy explanation is that I think you know, under the Indiana and the Georgia laws, they have a strict photo ID. Obviously, my preference on this would be a strict photo ID.

In the language that came from the bill that came over from the House, they offered an exception with two other forms of ID. But since they're not a photo, where you could identify someone, I can't speak for the House, but I'm assuming that option was given so you would have two different ways to identify someone to verify for sure that that's who they were.

SEN. WEST: So the only reason the requirement for two different forms is in this bill is because that's the way it came over from the House?

SEN. FRASER: The bill was passed in the House in this form and came over. And because it had
already passed one body in that form, and we had not
voted on it, we made the decision to pick up the bill
that came over last year from the House.

SEN. WEST: And that's the sole reason.

Is that correct?

SEN. FRASER: No.

SEN. WEST: What was the other reason?

SEN. FRASER: The other reason is, is we
think this is a very fair -- you know, it's a very
fair way, is that -- you know, I would love to see a
strict photo ID bill like Indiana and Georgia. But
the bill that we're laying out gives a second
opportunity for someone to identify themselves, which
would be a secondary form of identification.

SEN. WEST: Okay. But again, the reason
that it's in there is because it came over from the
House that way and some other reasons. And I'm trying
to figure out what are all the reasons that you put
the requirement for two forms in there, other than it
came over from the House that way?

SEN. FRASER: Again, the goal of my bill
is that I don't want somebody to go into the polling
place saying they're Royce West and use your voter ID.
I think if you had a photo ID -- both of us are big
people -- and if we came in, it would be easy for
someone to identify our features, that we are who we say we are.

SEN. WEST: Yes.

SEN. FRASER: But if you don't have some form of identification, then there is every ability for someone to steal your voter registration --

SEN. WEST: Okay.

SEN. FRASER: -- and go and vote in person, representing themself to be Royce West.

SEN. WEST: Okay. Let's look at this right here. So your Section (a) specifically deals with, under that -- I'm sorry.

SEN. FRASER: (a)?

SEN. WEST: Section (a) under 63.0101 --

SEN. FRASER: Where are you? What page?

SEN. WEST: I'm actually on Page 5 now.

SEN. FRASER: Okay. Page 5. Which line?

SEN. WEST: Well, this whole section, starting from I guess 9 -- and Section 10 of the bill.

SEN. FRASER: Got it.

SEN. WEST: Everything in there deals with some sort of photo identification. Right?

SEN. FRASER: Yes, that's correct.

SEN. WEST: And everything in Section
(b) deals with some documentary identification?

SEN. FRASER: I do believe you're --

SEN. WEST: Section (b) is on .

SEN. FRASER: All of (a) is photo and everything else is an alternate form of identification.

SEN. WEST: Okay. Now, as it relates to section; I'm still on Page 5 and 6. As it relates to the forms of identification that you have amended into the bill, did you make any --

SEN. FRASER: Well, I haven't amended anything into the bill.

SEN. WEST: Well, I'm sorry. Drafted. Drafted.

SEN. FRASER: The bill was filed.

SEN. WEST: Okay. As filed in this bill. Did you make any determination as to how it would impact ethnic minorities in the State of Texas? And, if so, what did you do to make a determination as to the impact?

SEN. FRASER: The answer I'm going to give you is the same answer I've given now to the last six witnesses, is that the way we help determine that was what happened in Indiana and what happened in Georgia. I have invited one person from Indiana and
two persons from Georgia. The persons from Georgia
are a Section 5 voter rights state.

    And I think those would be very good
questions to ask them, that if we implement a voter
identification bill, how did it impact their voters?
And I think they're going to tell you that their voter
response went up because those people felt very, very
good -- just a second. You're about to interrupt me.
They felt very good that -- they felt before --
weren't comfortable because they were afraid their
vote was going to be stolen. But after we implement
the voter identification, they felt good about it.
And voter results for all classes, but more especially
for African-Americans and Hispanics, increased. And I
believe that's what they're going to tell you. I
don't want to speak for them.

    SEN. WEST: Okay. And so then we should
extrapolate from their testimony that the experiences
in a Section 5 state -- Georgia -- and a non-Section 5
state would be applicable to the State of Texas?

    SEN. FRASER: Senator, my wishes on this
and my goal, if I could project the absolute best
thing that could happen, is that the people of Oak
Cliff that are in your area representing --

    SEN. WEST: By the way, have you talked
with any people in Oak Cliff about this bill?

SEN. FRASER: That we would have record
turnout by the people in Oak Cliff --

SEN. WEST: Have you talked to any of
the minorities -- I'm sorry.

SEN. FRASER: Have I talked to any?

SEN. WEST: Have you talked to any
ethnic minorities about this particular bill? Have
they had input into this bill at all?

SEN. FRASER: And I don't want to get
cute with you, but you are an ethnic minority, and you
and I have had a conversation about it.

SEN. WEST: Oh, no. I'm talking
about --

SEN. FRASER: So the answer to that
would have to be yes.

SEN. WEST: Okay. Well, let me be more
specific then. Have you talked to any ethnic
minorities that support your bill?

SEN. FRASER: The answer is yes.

SEN. WEST: All right. Are they
Hispanics and African-Americans?

SEN. FRASER: Yes.

SEN. WEST: Was it an African-American
that supports your bill?
SEN. FRASER: What did you say?

SEN. WEST: All right. I'm going to be more specific now. Have you talked to an African-American, African-Americans that support your bill?

SEN. FRASER: Yes.

SEN. WEST: Okay. Have you talked to Hispanics that support your bill?

SEN. FRASER: Yes.

SEN. WEST: Are they here to testify in support of your bill?

SEN. FRASER: Let me think about -- the invited testimony --

SEN. WEST: Yes.

SEN. FRASER: -- of the invited testimony, we have an African-American, I think, that is going to testify on this bill.

SEN. WEST: Is that African-American with the Secretary of State's office?

SEN. FRASER: Yes, he is.

SEN. WEST: He is a resource, isn't he?

He's not coming to testify --

SEN. FRASER: Did I say that -- I didn't say he was going to testify. I said he was going to testify on the bill.

SEN. WEST: All right. Now, let me go
back to my question. Maybe it wasn't specific enough.

Have you talked to any African-Americans or Hispanics
that are in support of your bill --

SEN. FRASER: Yes.

SEN. WEST: -- support? And will they
be here to testify?

SEN. FRASER: I'm not advised. I --

SEN. WEST: Okay. Have you talked to
any African—

SEN. FRASER: I haven't looked at the
list of who is going to testify.

SEN. WEST: Have you talked to any
African-Americans or Hispanics about the impact that
your bill will have on their right to vote?

Let me tell you what I'm getting to.
Have you talked to any African-Americans? Have you
done an assessment in terms of whether or not this
particular bill and the methods that you are employing
will be retrogressive as it relates to the minority
voters of the State of Texas?

SEN. FRASER: I think the answer is the
same answer I gave you about four questions ago, is
that I looked at -- and I've spent a lot of time
examining the data of actual voter turnout that
happened after the implementation of a photo ID bill
in Indiana and in Georgia. And I have invited the
election judges from both states to come and share
that with you today, and I feel sure that they will be
glad to answer your questions.

SEN. WEST: And based on your
observation of what occurred in those particular
states, you believe that your bill, if enacted in law,
will not have any retrogressive impact on the minority
voters of the State of Texas?

SEN. FRASER: I think my bill is going
to increase African-American and Hispanic turnout in
Texas. I think those people today feel
disenfranchised because they feel like there is fraud
going on in votes today --

SEN. WEST: Well, have you talked to
any --

SEN. FRASER: Are you interrupting me?
SEN. WEST: Yes. I --
SEN. FRASER: Just a second. I get to
finish.

SEN. WEST: But you say you feel like
those people. My question is, who have you spoken to,
to come to that assertion that those people feel as
though that there's fraud and all that stuff? What
African-Americans and Hispanics -- have you spoken to
some to make that assertion, in the State of Texas?

And I'll listen to you now. I'll listen to you now respond to my question.

SEN. FRASER: I have laid out a bill and researched, asked questions about the way people vote. I believe I have a bill that will encourage people that their vote will count and their vote is not going to be diluted by those that cheat. I think that will encourage voters, as it did in Indiana and in Georgia.

And I believe that this bill is not only good for the people of the State of Texas, but I'm pretty familiar with the ethnic makeup of the people you represent. And I think this bill will be extremely good for Royce West's senatorial district.

SEN. WEST: Well, and I appreciate your thoughts. But let me ask you again, you made some assertions that you believe that it's going to be good for every one of Royce West's district and ethnic minorities in the State of Texas. You made assertions that this will prevent people from cheating and all that other stuff. And I'm asking you, as relates to voter impersonation, have you talked to any African-Americans or Hispanics that said there was a problem in the state, that this is a problem in the state? Have you talked to any African-Americans in the state?
SEN. FRASER: Without a doubt, the way -- and I think after we hear the testimony of the witnesses here, and the Secretary of State, it's going to be hard for you to disagree that there is not a problem and the people you represent are not being not served correctly by the current law of Texas. And as a reasonable person -- which I know you are. I know you -- you know, you and I have served together for the last 12 years --

SEN. WEST: Oh, yes.

SEN. FRASER: -- and I respect you a lot, you know. And I think once you listen to the testimony, you're going to have trouble not agreeing that the people you represent will be well-served by this bill, and I believe that.

SEN. WEST: Okay. And, you know, that's fine. But the answer to my question is, have you spoken to anyone?

SEN. FRASER: Yes, I have.

SEN. WEST: African-Americans and Hispanics --

SEN. FRASER: Yes.

SEN. WEST: -- that say that cheating is a problem in the State of Texas, that voter impersonation is a problem in the State of Texas, have
you've spoken with anyone?

SEN. FRASER: I have spoken to --

SEN. WEST: African-Americans and Hispanics?

SEN. FRASER: -- African-Americans and Hispanics --

SEN. WEST: In the State of Texas?

SEN. FRASER: -- in the State of Texas.

And, you know, I have spoken to a lot of people in different classes. And the people of this state believe that -- 88 percent of the people polled believe that a photo or a voter ID in Texas should be something we should implement.

SEN. WEST: Sir, but --

SEN. FRASER: And of those -- just a second. Of those -- and the number I saw -- and I believe it was 74 person of the people surveyed were African-American that said they believe that we should implement a voter ID in Texas because they are concerned about the --

SEN. WEST: Do you have a copy of that study?

SEN. FRASER: Yes. I do have -- we have a Rasmussen study, and then there is a secondary study and we will get that -- I will get that for you, yes.
SEN. WEST: Mr. Chairman, I would like to see that.

SEN. FRASER: I will be glad to show it to you.

SEN. WEST: So you've depending upon a survey that was done? You're depending upon a survey that was done in order to make the statement that you're making in terms of talking to African-Americans and Hispanics?

SEN. FRASER: No. I'm relying on actual data of people that voted this election cycle that didn't vote in the election cycles before, because they were encouraged that their vote was going to count.

SEN. WEST: Okay. And going back to -- and let me make sure I understand your response to this question. You've said that in order to get an answer as relates to whether or not any less regressive means were considered by you as the author of this bill would have to talk to the Secretary of State?

SEN. FRASER: I don't think I said that at all. I don't think --

SEN. WEST: Well, and you --

SEN. FRASER: We even talked about less
regressive means. I said the Secretary of State is going to tell you the current state of the law in Texas and tell you we've got a big problem --

SEN. WEST: As it relates to regressive means and an aggressive -- a regressive analysis in terms of the impact that it has on minority voters. Who on your panel would be able to answer that question? What experts would be able to answer that question?

SEN. FRASER: I suspect probably every witness that is --

SEN. WEST: Every witness?

SEN. FRASER: I think so.

SEN. WEST: Okay.

SEN. FRASER: I think so. I suspect that -- we've got two personal -- or three personal examples, because we've got Indiana and Georgia. We've got the registrar from Houston that, you know, you can ask those questions. We've got the Secretary of State's office, and then we've got the Carter-Baker administration -- or the --

SEN. WEST: Does your bill do anything about fraud as it relates to denying people the right to vote?

SEN. FRASER: Say it again.
SEN. WEST: Does your bill do anything about fraud as relates to denying people the right to vote? You know, there may very well be individuals that come into precincts and -- you know, back in Dallas -- because you've talked about it a couple of times. I think it was in 1984, we had a bunch of judges come down to African-American precincts and put up signs basically saying, "You can go to jail." Were you aware of that?

SEN. FRASER: No, I'm not.

SEN. WEST: Okay. This bill does nothing about that type of behavior, though. Right?

SEN. FRASER: This bill --

SEN. WEST: Okay.

SEN. FRASER: -- is really straightforward, Senator. This only addresses one narrow part of the election code, and that is the fact that when you walk into that voting place, you're going to identify that when you vote as Royce West, they are verify you are who you say you are.

SEN. WEST: Those poll workers, how much do we pay poll workers, Senator?

SEN. FRASER: I'm not advised, but I bet the Secretary of State knows.

SEN. WEST: Okay. And so those poll workers...
workers will make that determination -- right? -- as to whether or not a person has the proper identification? Let me ask you this: Let's say that Troy Fraser's name was misspelled on the voter registration list, and you came in with your driver's license and it's correctly spelled. What would happen in that circumstance?

SEN. FRASER: And again, I'm going to punt to the Secretary of State, that they would make the determination. But I think likely the easy answer is, is that there is a system today under current law for a determination of that, that -- and I'll give you this example. I'm not real good about taking my voter registration card. I usually take my driver's license in. And if they had me on the rolls as F-r-a-z-e-r and my driver's license says F-r-a-s-e-r, there is a provision today under current law to manage that. I bet you that the --

SEN. WEST: I do the same thing. I normally just take my driver's license in.

SEN. FRASER: Well, but there's --

SEN. WEST: And some people just take a utility bill in.

SEN. FRASER: And the answer to your question is, I'm not addressing that. That is --
under current law, the Secretary of State has the ability to address that. And I think the answer is that if they can't determine your exact -- you know, who you are, they could provide a provisional ballot, do their research, find out you are okay and then let you vote.

SEN. WEST: And I think that's exactly the way that it plays out. But as it relates to provisional ballots -- and I think Sen. Ellis raised this question a few moments ago. What happens in that circumstances? You have a poll worker make a determination that Fraser is spelled wrong, you do the affidavit, you do a provisional ballot. When is that ballot counted under your bill?

SEN. FRASER: The Secretary of State --

I mean --

SEN. WEST: The Secretary of State's office?

SEN. FRASER: -- will be glad to answer that for you.


SEN. FRASER: Thank you.

SEN. DUNCAN: I will remind the members that we still have invited testimony, numerous...
witnesses, and then also public testimony, who have been waiting here today to testify.

So we'll move now -- Sen. Hinojosa, you're recognized.

SEN. HINOJOSA: Thank you, Mr. President.

Sen. Fraser?

SEN. FRASER: I'm sorry, Senator, I didn't hear him introduce you. I'll be glad to answer your questions.

SEN. HINOJOSA: I only have a few questions for you.

SEN. FRASER: And, Senator, I'm sorry. Let me get my head piece. I can already anticipate I'm going to have trouble hearing you. Just a second.

(Brief pause)

Are you there?

SEN. HINOJOSA: Yes, sir.

SEN. FRASER: Do a little mike test. It still is not working.

Can you give me a mike test? One, two, three, four, five.

SEN. HINOJOSA: Is it working now? Can you hear me?

SEN. FRASER: No, it's not working.
(Brief pause)

Senator, let's try that one.

SEN. HINOJOSA: Okay. Can you hear me now?

SEN. FRASER: I've got you now. Thanks.

SEN. HINOJOSA: Okay. Thank you, Senator.

SEN. FRASER: I'm --

SEN. HINOJOSA: I just have a few questions, and they deal more with the process and trying to identify people who come to vote, with a photo ID identification. What type of training will poll watchers have in order to determine whether or not a photo ID is valid or a fraud?

SEN. FRASER: Senator, I don't want to be cute or cut you off, but that's the same question the last seven people have asked. And the Secretary of State has been invited here to answer that question, and they can answer it a lot better than I can.

SEN. HINOJOSA: Well, but in your legislation, do you have provisions to provide some type of detection equipment to be able to tell whether or not a photo ID is fake?

SEN. FRASER: My bill is very straight-
forward in what will be required to identify. But the implementation of that and the training of the people will be left up to the Secretary of State. And I would bet you the Secretary of State would love to answer your question on that.

SEN. HINOJOSA: Well, let me follow up again. You know, it's very easy to get a fake ID at the flea markets and pay 20 bucks for them. And my question is, if you don't provide any legislation for any type of equipment to be able to detect whether or not that is a fake ID, then it defeats the whole purpose of your legislation.

SEN. FRASER: And, Senator, I think you have just made my case for me. That's the exact reason that we're doing this bill, is that there are people out there, unscrupulous people doing exactly what you just said, that they are taking identification of the people you represent and they are going and fraudulently voting and that we don't have the ability to either recognize that they have done that or to prosecute them after they have. Thank you for bringing that up.

SEN. HINOJOSA: Senator, that's not the question that I asked. That's not what I asked. I said do you have provisions in your legislation to
provide the funding for the local precincts to
purchase equipment to be able to detect whether or not
a photo ID is a fake?

SEN. FRASER: Senator, I'm sorry.
Did you get another head thing?
Senator, let's try it one more time.

Would you ask that question again, please.

SEN. HINOJOSA: Can you hear me?
SEN. FRASER: This receiver is a bad
receiver. I'm getting nothing but interference.
Can somebody get one of these that
works?

Let me try without it.

SEN. HINOJOSA: Okay.
SEN. FRASER: Where is Lucio's?
Go ahead.

SEN. HINOJOSA: I will repeat my
question, Sen. Fraser. And what I'm asking is whether
or not in your legislation you have provisions to fund
the detection equipment that will be able to tell
whether or not an ID is a fake one?

SEN. FRASER: Senator, again, I think
that would be a question of the Secretary of State, is
that -- I think you could ask him how they're going to
do it. But we -- as you know, the way this works --
you have been here like I have, a long time -- we lay this legislation out. They come back with a fiscal note of the impact to the state. They said there is no impact to the state, that they have sufficient money within their budget to handle it. And I would suggest you ask that question of the Secretary of State.

SEN. HINOJOSA: Well, I think that it's very important that you have provisions in your legislation to deal with this issue. When you travel by airplane, by air, as you well know, they scan your driver's license and they can tell whether or not it's a fake driver's license. And what I'm asking of you is whether or not you have provisions in your legislation to deal with fake IDs from the flea market, for example? I guess not.

SEN. FRASER: I don't want to dodge your question.

SEN. HINOJOSA: But you are.

SEN. FRASER: But you're asking a question that is a technical question of the agency. And again, I don't want to speak for my witnesses. But the guy that's going to speak from Houston, Houston is, in fact, using that exact same thing right now. So in some areas, it's already in place.
SENIOR HINOJOSA: Well, think about this:
How many precincts do we have here in the State of
Texas? And if we are going to check on IDs and
whether or not they're fake, you need to have the
proper equipment in place. How much are they going to
cost and who is going to pay for it?

SENIOR FRASER: Senator, you need to ask
the Secretary of State. And, you know, that is a
technical question that the agency is going to have to
answer.

SENIOR HINOJOSA: Well, I guess the real
answer, it may be an unfunded mandate on the counties.

SENIOR FRASER: Well, I don't think
there's something in the bill that places a mandate on
them to buy equipment for that. You know, I would
suspect that there is a system within the DPS to help
identify that. And I think -- I don't want to over-
project, but I suspect that between the Secretary of
State's office and in the counties, that there is a
system that if you input a number, that they can tell
whether they're a real number or not. And I'm sorry.
You're getting into an area that I don't have
expertise in.

SENIOR HINOJOSA: Well, I think it's very
important to have some provisions in your legislation
dealing with this issue because, otherwise, there is no way that you can have a poll worker know whether or not a photo ID is a fake one or not.

Let me also ask another question. Have you considered how much longer it would take for voters to vote, where the lines would be longer and it would discourage people to vote?

SEN. FRASER: Why don't you ask that of the Indiana and the Georgia people. They just went through two election cycles in Indiana, one in Georgia. They have already done this. That would be an excellent question for them.

SEN. HINOJOSA: But, Sen Fraser, you are the one carrying the legislation, not them.

SEN. FRASER: And that's the reason I invited expert witnesses in, of people that have already put this in place. The advantage we've got is that we're not reinventing the wheel on that. We can find out their information of what happened.

SEN. HINOJOSA: Well, I think your bill really needs a lot of work. It has a lot of shortcomings with it in the way it's going to be implemented.

And thank you for answering my questions.
SEN. FRASER: Thank you.

SEN. DUNCAN: Sen. Uresti.

SEN. URESTI: Thank you, Mr. President.

Sen. Fraser, I just have a few questions. I know it's been a long day, but I would like to ask a few questions more specific to my district.

But as a backdrop to my questions, not only to you but to the witnesses that you've been referencing all day, you have probably heard me speak to this session, my senatorial district is the largest geographical district in Texas.

SEN. FRASER: I know your district well. There's a lot of it that I used to represent, so I'm very familiar with it.

SEN. URESTI: And it's actually larger than about 24 states in the country.

SEN. FRASER: It's a great district, good people.

SEN. URESTI: It is a beautiful district. And one of the reasons I stand today to ask you these questions is, I represent the constituents of my district. In addition to being the largest district in Texas, it's also the second poorest district in Texas. The per capita income, the average
per capita for my constituents is $12,484 per year.

SEN. FRASER: Are you aware of the fact that just right below, right above that is the district that I represent? And so we have a lot in common in the people that I represent and the people you represent, because our districts touch. And a lot of the people that you represent now are people that I used to. So we have a very like district.

SEN. URESTI: And even more reason why I think you will appreciate the questions that I have of you, Sen. Fraser. In my district, the poverty rate is approximately 24 percent. So when you couple the poverty rate with the vast area of my district, you see the challenges that my constituents face.

And I tell you that because when we talk about photo ID and the necessity to obtain an ID, whether it be a driver's license or whether it be an actual Texas photo ID, knowing the area as well as you do, when you look at some of the counties in my district, I think you probably, better than most, fully appreciate the distances that one has to travel in order to get an ID. And I'll just give you a few examples. In addition to that, though, the fact that many of these DPS offices are only open on very sporadic days and times.
For example, in Bandera County, it's open -- the DPS office is only open on Wednesdays from 9:00 to 4:00. In Culberson County, it's only open -- the DPS office is only open on Thursdays from 9:00 to 5:00.

In Kinney County, which is where Brackettville is located, the DPS office is only open the first and third Tuesday of each month from 9:00 to 4 o'clock. And then one other example of many, Terrell County, which is down where Sanderson is located, the DPS office is only open one Monday a month from 9:30 to 3:30.

So having said that, my concern is the fact that if an individual needs to obtain a photo ID or a Texas driver's license, the challenges that they will face in, one, having to go to those offices; two, the distances that they'll have to travel; and then three, if they're not familiar with the dates or the times that they are open, the fact that they may have to go back.

And if they're not registered or they do not obtain that in a timely manner, which I understand it could take up to 60 days or so to receive your photo ID, there is a very good chance that they will not be able to have that ID when they do go to vote.
Would you agree with me on that, Sen. Fraser?

SEN. FRASER: Well, that was a consideration in looking at the parameters, is that the good news for you is, we still have all the same parameters for mail-in ballots. We haven't changed that. And all these other forms, there is just a multitude of things they can use for a secondary form of identification. So if for some reason they couldn't get to that -- and I would -- you know, you and I know that most of those people out there drive and they do have cars, the bulk of them do, and they would be -- they would really like to go and get that driver's license. But if they couldn't and they were going to vote, there is a multitude of things they can use for identification to make it really, really easy, or they could do a mail-in ballot. We've made it easy for them.

SEN. URESTI: And I appreciate you bringing that up, because that's a good segue into my next question. But again, going back to the poverty rate, I would respectfully disagree with you, Sen. Fraser, that they all have cars, because most of them can't afford cars, at least in my district.

On Page 5 of your bill, Senator, you reference -- Page 5, Line 20, under "Documentation of
Proof of Identification," you reference "a United States military identification card that contains the person's photograph." And I just want to make sure that I clearly understand what you have in your bill, and that for those military individuals, whether they be active duty, reservists, retired, et cetera, if there is no photograph on their military ID, then they would not be able to use that ID under your bill. Is that correct?

SEN. FRASER: I'm sorry, Senator. I think you probably have misread this. You're under the section that lays out the acceptable form of photo ID. But if it doesn't have a photo on it, it could be used as one of the non-photo IDs, plus one other form of identification. So the answer to your question is, yes, they could use it.

SEN. URESTI: Okay. So a military ID that does not have a photo could be used?

SEN. FRASER: Yes. It's a form of government identification.

SEN. URESTI: Okay. That's not the way I read it, but I'm glad you cleared that up for me.

SEN. FRASER: Under the (2), it would be one of their forms of identification. It is a government-issued form of identification. And under
the non-photo area, it would be used.

SEN. URESTI: And just so I'm clear, it reads "a United States military identification card that contains the person's photograph." What my question is, if there is a military ID card that does not have a photograph, then you're saying that those military individuals, whether they be active duty, whether they be reservists, whether they be retired, would not be able to vote with that form of ID. Is that correct?

SEN. FRASER: That is not correct. That would be one of their forms of ID. And if they had one other piece of identification, their utility bill, with that military ID, they're fine.

SEN. URESTI: Whether it has a photograph or no?

SEN. FRASER: Yes.

SEN. URESTI: Okay. Very good. That's good to know.

Going into the alternative forms of documentation, specifically on Page 6, what I'm trying to reconcile and what is confusing to me, and I believe would be very confusing to the voters of Texas, and complicated, on Page 6, Line 14, you list the following documents -- I beg your pardon -- "The
following documentation is acceptable as proof of identification under this chapter."

Then it goes on to read, Subparagraph (1), a copy of a current utility bill; Paragraph (2), official mail; Paragraph (3), a certified copy; Paragraph (4), United States citizenship papers; Paragraph (5), an original or certified copy; and then No. (6,) court records.

And so I'm trying to reconcile those different terms in that you have a copy, you have official document, you are certified document, you have papers, you have original or certified copy, and then you have court records.

And to me, that's confusing as an attorney, much less I think to my constituents. And so specifically -- this is my question, Sen. Fraser -- on No. (16) (sic) under the Paragraph (b) where it reads, "a copy of a current utility bill, bank statement, government check, paycheck, or other government document," that leads me to believe that if they brought the original document, they would not be able to use the original document, it would have to be a copy of that document. Is that correct?

SEN. FRASER: I think you're over-reading the issue, because this is current law. This
is current law that we're operating. If you voted in this last election, you voted under this. If you will look at that -- and I believe -- is that not taken from current law? So if you're confused about it today, you were confused about it yesterday, because it was -- that's current law.

SEN. URESTI: Well, let me tell you why I'm confused, Sen. Fraser, because if you go on into Paragraph (2) that's not current law, and Paragraph (3) that's not current law, for specifically Paragraph (3, you insert "a certified copy." Paragraph (5), you put "an original or certified copy." So that's why it's confusing, Sen. Fraser, and that's why I'm trying to clarify it, because you use a copy in one instance, then you use a certified copy in another instance. But here is my question. I want to go back to my question.

SEN. FRASER: Wait, wait, wait. Hold on a second. You've got to answer the one that you just asked. One of the great things about these hearings -- and it's the same answer I gave now to the last eight people I've talked to -- I'm about to have the Secretary of State come up here. The Secretary of State's job is to issue the clarification of adopting rules to clarify the implementation of the law we
passed. And I would -- I don't want to put words in
their mouth, but I would assume they're going to say,
"We can handle that."

SEN. URESTI: Okay. And I appreciate
that. And because you can't speak for the Secretary
of State and because you are the author of this bill,
I just wanted to ask you, so I could clarify and so I
can explain it to the voters of Texas and to my
constituents, then -- and I think you understand now
what I'm trying to reconcile in that you asked for
different documentation. And, one, it can be a copy
or it can be the official mail, et cetera. And I will
ask the specific questions of the Secretary of State.

SEN. FRASER: I think it would be a good
idea to do that.

SEN. URESTI: But because you are the
author, I wanted to ask you specifically. And then I
think my last question, Sen. Fraser, if you bear with
me one second. I beg your pardon.

On Page 4 under Section 8, on Line 20
where it reads "did not deliberately provide false
information to secure registration in a precinct in
which the voter does not reside," I'm trying to
understand what you mean when you put "deliberately
provide false information."
SEN. FRASER: Senator, again --
SEN. URESTI: And (2) --
SEN. FRASER: -- I don't want to interrupt you here, but you're quoting current law. That's law right now that we have been living under for some period of time. And if you've got a question about the interpretation of the Secretary of State's rule on that, I bet they would answer it.

SEN. URESTI: And I hope they can. But, Senator, this is part of your bill, though. (1) --
SEN. FRASER: Now, just a second. You know the way this works in legislation is that if it's current law, you reprint current law. And if you're going to make a change, you insert it and underline. And all we're doing there -- we could have left all that out and make you work and go see how it fits together. But, you know, you have been here a long time, and you know that's the way it works is, we go ahead and tell you what current law is so it reads correctly. I didn't make that law up. It's just a law that is there. And I think you could ask the Secretary of State the way it's interpreted.

SEN. URESTI: And I appreciate that. But did you not strike certain language from current law in this bill, Sen. Fraser?
SEN. FRASER: If it was struck -- did we strike -- just a second.

(Brief pause)

I'm not advised as to whether we struck something. I believe the language that you're referring to on Line 20 is current law and above and below it is current law. And I, to my knowledge -- but again, I think you should ask the Secretary of State that.

SEN. URESTI: And I'll do that. Thank you, Sen. Fraser.

SEN. FRASER: You bet. Thank you.

SEN. DUNCAN: Sen. Van de Putte.

SEN. VAN de PUTTE: Thank you,

Mr. President.

And, Sen. Fraser, I'm . . .

SEN. FRASER: It was wishful thinking.

SEN. VAN de PUTTE: And I would have hoped that this question would have been asked before, and I've listened and it's not, and I know that we would love to --

SEN. FRASER: I would love to have a new question.

SEN. VAN de PUTTE: Well, thank you.

I'm going to be very, very quick. I am looking at
SEN. FRASER: Just a second. Let me get my glasses, Senator. Hold on. I'm deaf and blind.

SEN. VAN de PUTTE: Section 10 of the bill.

SEN. FRASER: Section 10. What page?

SEN. VAN de PUTTE: Page 5, Line 27.

SEN. FRASER: Got it.

SEN. VAN de PUTTE: In that section, there is a change from the United States citizenship papers -- and you strike that -- to certificate. Tell me, what is the difference between a certificate and the papers?

SEN. FRASER: Senator, again, you and I have served together a long time. And you know when these bills come from Leg. Council, that if there is clean-up legislation, they need to clarify something that is either case law. The answer is, I don't know why they struck that.

SEN. VAN de PUTTE: Well, it --

SEN. FRASER: It was not our recommendation. This came from Leg. Council this way. I can find out the answer to that --

SEN. VAN de PUTTE: Okay.

SEN. FRASER: -- but I can honestly say
I don't know.

SEN. VAN de PUTTE: Okay. Well, I think there is different terminology. It is my understanding, since I represent a Hispanic district -- and many of the senators here have a number of Hispanics -- this is especially important for naturalized citizen. It is my understanding that the certificate means the 8-by-11 certificate with a photo that is given at the time of naturalization. So it does have a photo, and it's under your section that it would be okay for a photo. My question is that the government also issues a wallet-sized card that is listed as a paper. That could be part of the paper, but it has no ID.

On the section of the bill that you talk about non-photo, which would be Page 6, Line 24, it says "United States citizenship papers." Papers I think are the card. But the papers, are they the certificate? And the reason I ask is, because at the time of naturalization -- and many of us have Hispanics in our district that as young children were naturalized. That picture is of a child and doesn't match up. So how --

SEN. FRASER: Senator -- and again, I don't want to dodge your question. I think probably
this is a legitimate question to ask the Secretary of State.

SEN. VAN de PUTTE: Okay.

SEN. FRASER: I'm not sure they can answer that one. But I will tell you my intent on this is not to deny any legal voter that should have the right to vote, and that if someone is using this as a source of documentation and it is a legal documentation that proved they are who they say they are, I want them to be able to use it. I want all Hispanics that you represent --

SEN. VAN de PUTTE: Yes.

SEN. FRASER: -- to have the ability to vote under this bill, and my intent is to increase their right to do that. So if there is a tweak needed there, I can tell you I'm open to it. I don't know the answer to the question you're asking.

SEN. VAN de PUTTE: Well, thank you. In researching that, there is a difference between "certificate" and "paper." On one, the certificate does have a photo ID; the paper does not. And I think that's probably why Leg. Council did that.

SEN. FRASER: You and I could probably sit down with a Leg. Council lawyer, ask them what happened, the meaning of that. And it is certainly
not my intent in any way to deny someone the right to vote. My intentions are exactly the opposite. I want them to be able to identify themself and vote.

SEN. VAN de PUTTE: Well, thank you, Senator, because the picture photo for many of my constituents who have been naturalized and are now adults or maybe even elderly does not match up, because that was taken at the time of naturalization.

And my fear was that an election clerk, having to know the difference between certificates and paper and then maybe the name not matching up, particularly for women who then would be -- the naturalization paper certificate would never match up with your married name if you were naturalized as a child, and that would be extremely discriminatory toward Hispanic citizens and particularly to this state, which may not have been a problem in Georgia or Indiana but is definitely a problem here, and I appreciate that.

SEN. FRASER: Not a -- absolutely, we want -- if someone is a legal citizen and has identification and they're registered to vote, then I want them to have the ability to do that.

One of the questions you just asked about the picture not matching up, I would also advise
you to ask the Secretary of State that, is that I think there's methodology, that it's even addressed -- it was anticipated -- in some of the things I read, that if I grew a beard and I don't look like I used to, a methodology to make sure that we could verify who you say you are.

SEN. VAN de PUTTE: Thank you, Senator. And I have one follow-up question. You and I have the luxury and the blessing of representing many now Texas residents who are voting in the state who happen to be military families and military members. And I know you are well aware of Fort Hood and Sen. Shapleigh at Fort Bliss. My question is a follow-up to Sen. Uresti's questions on military ID.

Many times the identification of record doesn't have the address of the voting. So if they were voting here but their address of record is at -- how would, under your bill, a clerk treat that inconsistency of a nonmatch-up for our military members?

SEN. FRASER: Again, Senator -- and I thank you for acknowledging my district being impacted. I believe that I have the largest number of ex-military in the state living in my senate district, you know, former military. I want to make sure that
they have the right to vote.

Yes, they do change addresses, but this is something that we have been coping with for years, even under our current system. Again, I think the Secretary of State is capable of not only answering that question but also making sure we have a seamless transition to this, because it's extremely important to me, and I know it is to you, is that I want to make sure that our brave men and women that have served this country preserve that very basic right in making sure they get to vote in elections.

SEN. VAN de PUTTE: Thank you, Senator. I appreciate that. And I want to clarify, just for the last time, so that I understand. With the changes that you are proposing, every Texan who wishes to cast a ballot would have to bring both their certificate, voter certificate that's issued by the jurisdiction that they've registered in, and some sort of photo identification. Is that correct?

SEN. FRASER: Well, that's not exactly, the way you phrased that. Actually, for someone to vote, all they've got to do is show up. So that the -- I need to ask a question. I just thought of something.

(Brief pause)
Okay. I'm sitting here having a discussion with my staff, clarifying that that is the case. And I can tell you, my intent on this would be that it's -- here would be the example I would give you. I go to Marble Falls or Horseshoe Bay to vote. I never have my voter ID. I always just pull out my driver's license. Let's just say for some reason I forgot my driver's license. My intent would be, if I have two other pieces of identification listed here and they match up with the voter roll and it says, "Troy Fraser, 103 Lighthouse," a particular precinct, it would be my intention you should vote.

SEN. VAN de PUTTE: Well, that's --

SEN. FRASER: I'm not clear -- I want to make sure, as you do -- and I think what you're raising is making sure that the bill absolutely says that, and that is the intent.

SEN. VAN de PUTTE: Well, thank you, Sen. Fraser, because the way I looked at this, I thought that every Texan who wants to cast a ballot now will have to present with both the voter certificate and a photo ID or the certificate and two alternate forms. So you either have a two-fer or a three-fer. And I'm just wondering if that's correct or if someone shows up and they do not have their
certificate, do they just need a photo ID? And if they show up and they don't have their certificate or a photo, what other two --

SEN. FRASER: I don't have the answer for you today. I'll be honest with you, that I've got to look at that. I wish I could give you an answer on that, but I don't have an answer right now. And I've got to look at the bill, talk to the Secretary of State's office, see how that flows together, look at the election official and determine how we blend that together.

My intention is that I want everyone to vote. I'll give you that as a blanket answer. My intention is that if someone can prove who they say they are, I want them to vote.

SEN. VAN de PUTTE: Thank you, Sen. Fraser.

SEN. FRASER: Thank you.

SEN. DUNCAN: Nobody else? All right, members. Sen. Gallegos -- I thought I had lost count.

SEN. GALLEGOS: A question of the author.

SEN. FRASER: This is the three-minute rule. Are we using the egg timer rule?
SEN. GALLEGOS: Well, you already surpassed that, so I thought I would --

SEN. FRASER: No. I'm still just answering your questions.

SEN. GALLEGOS: Well, Senator, let me ask you, have you thought about the state of our economy and the steadily rising number of foreclosures taking place? And I'm talking about this bill. Just last week, the Dallas Morning News reported that the Carrollton-Farmers Branch School District has seen 185 percent increase in the 2008-2009 school year of homeless students.

SEN. FRASER: Senator, can you help me here? I'm having trouble. I'm looking at the bill, and I'm having trouble finding the place that has to do with foreclosures.

SEN. GALLEGOS: Well, no, no, no. I'm getting to my question, if you allow me.

SEN. FRASER: I will.

SEN. GALLEGOS: These are people in the State of Texas whose entire families are affected. And the homeless, as you know, well know, they move around a lot. They're U.S. citizens, and they move around a lot and stay in cars, in shelters and sometimes relatives' houses. But the important thing
is that they do not have a permanent residence, even though they're U.S. citizens.

And I guess -- and they don't have utility bills, they aren't on a current regular schedule. And to show, if that is asked for when they go to a precinct to vote, I guess my question is, under your bill, under this scenario, is there a limit on how many times they can get an official DPS ID to vote every couple of weeks?

SEN. FRASER: Well, first of all, I'm confused in your description of this, because for someone to register to vote and be legal to vote, they have to specify the precinct that they're in. And that's one -- I think one of the requirements that the Secretary of State looked for, is that you have to be a resident voting in a specific precinct, and they had to mail that to somewhere. But the answer to your question that you were getting to is, is there a limit on the number of IDs they can get? And, no, there is no limit.

SEN. GALLEGOS: There is no limit under your bill?

SEN. FRASER: No limit.

SEN. GALLEGOS: Okay. All right. Thank you.
SEN. FRASER: Unlimited IDs.

SEN. GALLEGOS: There's unlimited ID.

Okay. All right. Thank you.

SEN. FRASER: Thank you.

SEN. DUNCAN: Okay, members. If there are no other questions, we are now ready to move into the invited testimony phase of the hearing. So at this point in time, I think I have been submitted -- actually, we had the Secretary of State collect the list from the author and those who might be opposed to the bill.

And, as stated earlier, I will first invite -- we'll have Hans von Spakovsky to testify first. He is proposed by Sen. Fraser. And then followed by that, we'll have Tova Andrea Wang, who is proposed by Sen. Van de Putte. If we could bring them into the chamber. And we will have a timer that will be 10 minutes.

Sen. Van de Putte, I believe you had a witness that you needed a little bit longer time. Is this the witness?

Okay. And, members, again I'll state again, we will not recognize anybody for a question during the 10-minute period of time for layout. Thereafter, we will allow questions. I'll remind you
that we have the public testimony that will follow after the invited testimony, so be efficient. But, you know, you're entitled to ask your questions.

So is Mr. von Spakovsky in the chamber?

And for the sake of time, if we could go ahead and bring Tova Andrea Wang into the chamber.

Is this -- who is this?

(Off-the-record discussion)

SEN. DUNCAN: Mr. von Spakovsky.

Okay. She will go second.

Okay, Mr. von Spakovsky, you're recognized. You need to state your name and who you represent. I believe you have turned in a witness affirmation card. You have 10 minutes. That will be strictly enforced. And you have a timer there in front of you. You can begin.

(Proceedings continued in Volume 1B)
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 5:50 p.m., on Tuesday, the 10th day of March 2009, the above-entitled matter continued at the Texas State Capitol Senate Chamber, Austin, Texas, before the Committee of the Whole Senate; and the following proceedings were reported by Aloma J. Kennedy, a Certified Shorthand Reporter of:

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

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

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

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

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

You've had some questions about why have there not been more prosecutions of voter impersonation. Well, as the Seventh circuit said in the Indiana case, it's hard to prosecute something when you don't have the tool to detect it, voter ID.

However, if you want a good example of
this, I wrote a paper last year for the Heritage
Foundation that detailed a publicly released state
grand jury report in New York City, 1984, which
detailed a successful and undetected 14-year
conspiracy in which impersonation fraud was carried on
at the poll and thousands of fraudulent ballots were
cast in not just state legislative primary elections
but also in congressional elections.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

And I'm done, Mr. Chairman.

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

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

(Exhibit No. 14 marked and admitted)

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

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

Sen West.

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

SEN. DUNCAN: Standing up.

QUESTIONS FROM SENATE FLOOR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEN. WEST: Is Texas one of those states?

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

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

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

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

MR. von SPAKOVSKY: That's incorrect.

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

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

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

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

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

MR. von SPAKOVSKY: To voter suppression?

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

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

MR. von SPAKOVSKY: Yes.

SEN. WEST: And which studies have those been?

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

SEN. WEST: In the State of Georgia?

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

SEN. WEST: For what year -- years?

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

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

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

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

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

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

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

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

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

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

MR. von SPAKOVSKY: Yes, Senator.

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

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

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

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

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

MR. von SPAKOVSKY: May I answer the question?

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

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

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

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

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

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

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

MR. von SPAKOVSKY: Yes, sir.

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

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

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

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

In fact, this is a quote from the study.

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

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

MR. von SPAKOVSKY: There may be, yes.

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

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

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

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

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

SEN. WEST: Okay.

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

SEN. WEST: And I apologize.

SEN. DUNCAN: -- room before you --

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

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

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

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

MR. von SPAKOVSKY: There may be, yes.

SEN. WEST: So the answer to the question is yes, there are persons that disagrees with
your conclusions?

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

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

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

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

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

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

MR. von SPAKOVSKY: Yes.

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

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

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

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

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

MR. von SPAKOFSKY: Correct.

SEN. WEST: -- based on the legislation? Okay. Now, let me ask you this: What have you seen that leads you to that conclusion?

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

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

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

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

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

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

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

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

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

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

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

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

MR. von SPAKOVSKY: Four years.

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


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

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


SEN. SHAPLEIGH: Thank you, Mr. Chair.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEN. SHAPLEIGH: Who is Joseph Rich?

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

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

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

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

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

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

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

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

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

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

SEN. SHAPLEIGH: When you were there?

MR. von SPAKOFSKY: At some point, yes.

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

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

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

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

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

MR. von SPAKOVSKY: Yes.

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

MR. von SPAKOVSKY: I was.

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

MR. von SPAKOVSKY: They did, Senator.

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

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

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

Were they talking about you in this letter?

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

(Simultaneous discussion)

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

(Applause)

SEN. DUNCAN: (Raps gavel)

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

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

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

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

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

SEN. SHAPLEIGH: Well, I'm just going to take it that they're talking about you. "After careful review" -- I'm now on Page 3 -- "of the Georgia voter ID law, career staff responsible for the review came to a near unanimous decision, consistent with the precedent established by the Department in previous reviews; that the Georgia provision would negatively affect minority voting strength. Four of
the five career professionals on the review team agreed. The one who did not have [almost] no experience in enforcing §5 and had been hired only weeks before the review began through the political hiring process described" in this letter. "The recommendation to object to the law, detailed in a memo exceeding 50 pages was submitted on August 25, 2005. The next day, Georgia submitted corrected data on the number of individuals who had state-issued photo identification. The career review team was prevented by Mr. von Spakovsky from analyzing this data and incorporating the corrected data into their analysis. Instead, there was an unnecessary rush to judgment and the law was summarily precleared on August" the 25th, the day after their monologue was delivered to you. The law was pre-cleared by you the same day the corrected data had been submitted.

"Subsequent analysis of this data by a Georgia political scientist revealed that hundreds of thousands of voters did not have the required voter ID, a disproportion number of whom were poor, elderly and, most importantly for the Voting Rights Act review, minorities. In short, this data provided further evidentiary support for the objection recommended by the professional staff. Subsequently,
a federal court in Georgia found that this law
violated the poll tax provision of the Constitution."

Are they referring to actions taken by
you on August the 25th and 26th of 2005?

MR. von SPAKOVSKY: Senator, there are
so many facts wrong and so many misrepresentations in
that letter, and you've also gotten a lot of other
facts incorrect, that it would take me at least
probably half an hour to answer everything you've got
wrong in that case, the more important of which is
that the career Chief of the Voting Section who was a
30-year veteran of the Department of Justice, someone
who had been enforcing the Voting Rights Act and
filing suits in southern states like Mississippi and
Alabama for 30 years, sent a recommendation that said
that the law should be approved, that there was no
evidence of retrogression.

And I would be happy to give you some of
the data, Senator. For example, the Department of
Driver Services, which is I believe the same as the
department here that gives your driver's license, has
showed that there were 6.5 -- 6.4 million individuals
in Georgia who had driver's licenses and photo IDs.
There were only 4.5 million registered voters.

That department had racial data. For
60 percent of the cardholders, they found that 28 percent of the individuals who held driver's licenses were African-American, which was higher than the black percentage of the voting age population in Georgia, indicating that African-Americans in Georgia held driver's licenses at a slightly rate than white Georgians.

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

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

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

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

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

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

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

SEN. SHAPLEIGH: Let me ask you this:
Were you in Florida in 2000?

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

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

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

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

Did you participate in the drafting of these briefs?

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

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

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

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

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

SEN. SHAPLEIGH: Did anyone --

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

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

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

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

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

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

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

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

MR. von SPAKOVSKY: No. I --

SEN. SHAPLEIGH: -- was there a unanimous recommendation --

MR. von SPAKOVSKY: That unanimous --

SEN. SHAPLEIGH: -- by --

MR. von SPAKOVSKY: That recommendation was incorrect, Senator.

SEN. DUNCAN: Hang on a minute. We're talking over each other. One at a time. Senator, you've got a question on the floor.

MR. von SPAKOVSKY: May I answer?

SEN. DUNCAN: The witness can answer.

SEN. SHAPLEIGH: Let me ask, if I may, Mr. Chairman.

SEN. DUNCAN: All right.

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

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

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

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

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

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

Do you recall getting this letter?

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

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

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

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

SEN. SHAPLEIGH: Yes.

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

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

So he was a liar. Okay.

SEN. DUNCAN: Being as we're not subject to the hearsay rule, I'll go ahead and admit this evidence.

Are you bringing them down?

(Exhibits handed to Secretary Spaw)

SEN. DUNCAN: Senator, I have here Exhibit 15, which is a letter dated June 11, 2007, to Diane (sic) Feinstein. And then there is another letter in there.

SEN. WILLIAMS: Mr. Chairman?

SEN. DUNCAN: We'll have Exhibit 15A, B and C. Exhibit A is the June 11, 2007 letter. Exhibit B is the -- is this a blog or -- this is signed by him? Okay. Or it's an e-mail from -- okay -- from Barack Obama, June 12, 2007, and then also a letter from Public Citizen dated October 3, 2007, which will be Exhibit 15C.

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

SEN. DUNCAN: Members, we've been going for about two hours. It's my plan to try to give the court reporter a break every hour and 45 minutes to two hours, as necessary. It will be a 10-minute
break --

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

SEN. DUNCAN: Sen. Wentworth.

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

SEN. WEST: Mr. President?

SEN. DUNCAN: Is there any objection?

SEN. WEST: There is objection.

SEN. DUNCAN: Why is there objection?

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

SEN. DUNCAN: Well, we'll --

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

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

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

SEN. DUNCAN: Let's take one thing at a time. Is there any objection to the witness being able to submit testimony to the committee --

SEN. WEST: There is objection.

SEN. DUNCAN: -- to be received in the record post--

SEN. WEST: There is objection, yes.

SEN. WENTWORTH: Mr. Chairman, I move that the witness be permitted to respond in writing to the letters that have been obviously not to his advantage.

SEN. WEST: This man has characterized the President of the United States as a liar.

SEN. DUNCAN: All right. We're going to take a break and we will be back in session at seven -- rather, 6:50 -- 6:55. I'm sorry.

(Recess: 6:46 p.m. to 7:06 p.m.)

SEN. DUNCAN: The Senate Committee of the Whole will come to order. If we could get our witness back up here. I think Sen. Shapleigh rested. And we will call Sen. Williams.

SEN. WILLIAMS: Thank you, Mr. Chairman.

When the witness returns, I have some questions for him.
(Brief pause)

SEN. DUNCAN: The witness is present. You can ask your questions.

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


SEN. WILLIAMS: Say it again.

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


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

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

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

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

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

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

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

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

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

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

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

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

SEN. WILLIAMS: Would you like it?

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

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

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

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

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

MR. von SPAKOFSKY: That is correct.

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

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

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

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

SEN. WILLIAMS: Thank you very much.

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

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


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

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

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

(Exhibit No. 16 marked and admitted)

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

SEN. WATSON: Thank you, Mr. Chairman.

I just have a couple of questions.

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

MR. von SPAKOVSKY: I don't know.

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

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

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

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

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

MR. von SPAKOVSKY: No.

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

MR. von SPAKOVSKY: No.

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

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

MR. von SPAKOVSKY: I have not, Senator.

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

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

SEN. WATSON: Well, you may have just answered my question.

MR. von SPAKOVSKY: Well, you know, I have not done a study of Texas.

SEN. WATSON: Okay.

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

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

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

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

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

MR. von SPAKOVSKY: The numbers --

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

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

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

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

MR. von SPAKOVSKY: I have no idea.

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

MR. von SPAKOVSKY: I don't know.

SEN. WATSON: Thank you, Mr. Chairman.

SEN. DUNCAN: Senator Ellis.

SEN. ELLIS: Thank you, Mr. President.

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

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

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

Is this your first time in Texas?

MR. von SPAKOVSKY: No, sir.

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

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

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

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

SEN. ELLIS: Okay.

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

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

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

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

MR. von SPAKOFSKY: I --

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

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

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

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

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

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

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

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

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

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

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

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

MR. von SPAKOVSKY: I do.

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

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

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

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

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

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

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

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

SEN. ELLIS: But conservative?

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

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

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

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

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

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

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

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

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

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

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

SEN. ELLIS: Thank you.

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

MR. von SPAKOVSKY: Thank you, Mr. Chairman.

SEN. DUNCAN: Thank you, sir.
The Chair calls Tova Andrea Wang.

Ms. Wang, you have 10 minutes. And you can begin. And state your name and who you represent.

TESTIMONY BY TOVA ANDREA WANG

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you very much.

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

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

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

SEN. CARONA: Please proceed.

SEN. GALLEGOS: Thank you.

QUESTIONS FROM SENATE FLOOR

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

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

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

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

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

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

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

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

And we are talking about an environment
in the last several years in which you've never seen
such an aggressive operation by law enforcement to ferret out instances just like what we're talking about here today, and they didn't come up with anything.

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

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

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

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

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

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

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

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

MS. WANG: None.

SEN. GALLEGOS: None?

MS. WANG: None.

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

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

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

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

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

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

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

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

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

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

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

SEN. GALLEGOS: Let me ask you this:

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

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

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

MS. WANG: Yes, of course.

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

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

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

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

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

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

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

SEN. GALLEGOS: Ms. Wang, thank you very
much.

MS. WANG: Thank you.

SEN. DUNCAN: Sen. Lucio.

SEN. LUCIO: Thank you, Mr. President.

And I'll be brief.

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

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

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

MS. WANG: Sure.

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

MS. WANG: Sure.

SEN. LUCIO: Thank you very much.

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

(Exhibit No. 17 marked and admitted)

MS. WANG: Thank you very much.

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

The next witness will be Cameron Quinn.

Sen. Fraser.

Ms. Quinn, you have 10 minutes.

TESTIMONY BY CAMERON QUINN

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

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

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

The commission was formed, organized by the American University Center for Democracy and Election Management, and it was in association with
Rice University's Baker Institute for Public Policy and the Carter Center. And the activities of the Commission were supported by funding a research by the Carnegie Corporation of New York, the Ford Foundation, the Knight Foundation, the Omidyar Network and The Pew Charitable Trusts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEN. DUNCAN: Thank you, Ms. Quinn.

SEN. ELLIS: Thank you, Mr. President.

QUESTIONS FROM SENATE FLOOR

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

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

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

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

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

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

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

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

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

SEN. ELLIS: You are a consultant?

MS. QUINN: Yes. sir.

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

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

SEN. ELLIS: I couldn't hear you.

MS. QUINN: The Republican lawyers.

SEN. ELLIS: Republican lawyers.


SEN. ELLIS: That's a good group.

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

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

MS. QUINN: Did they?
SEN. ELLIS: But it's a good group.

And in your capacity here today --

MS. QUINN: Yes, sir.

SEN. ELLIS: -- are you representing the Carter-Baker Commission or are you just testifying from the vantage point of someone?

MS. QUINN: No, sir. I am here and was requested by Secretary Baker's staff to be here on behalf of the Carter-Baker Commission.

SEN. ELLIS: Okay. You heard my discussion earlier, and you made reference to the totality of the recommendations in the report --

MS. QUINN: Yes.

SEN. ELLIS: -- 86 or 87, somewhere in that neighborhood.

MS. QUINN: I believe it was 87. I will say that I did not go back to double check today.

SEN. ELLIS: That's okay. What would you characterize as the major recommendations in the report? Obviously, voter ID has gotten the attention of a number of states for some reason.

MS. QUINN: Well, let me say that the Executive Summary nicely summarizes them. And they propose a voter registration system in which the states, not the localities, are responsible for the
accuracy and quality of the voter lists, and other ways to improve voter registration. They propose the voter ID requirements.

SEN. ELLIS: The REAL ID Act?

MS. QUINN: The REAL ID Act.

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

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

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

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

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

MS. QUINN: Yes, sir.

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

MS. QUINN: No, sir!

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

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

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

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

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

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

SEN. ELLIS: Enjoy your stay in Texas.

Thank you very much.

MS. QUINN: Thank you, sir.

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

You need to say that into the --

MS. QUINN: Yes, sir.

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

(Exhibit No. 18 marked and admitted)

SEN. DUNCAN: Sen. Fraser.

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

MS. QUINN: Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

SEN. FRASER: Thank you very much.
Thank you for being here today.

MS. QUINN: It's my pleasure.

SEN. DUNCAN: Sen. Van de Putte.

SEN. VAN de PUTTE: Thank you,

Mr. President.

Thank you very much for coming to appear
today. And if you saw me going like this
(indicating), it's because you have a really nice soft
voice, but I was straining on this side. So I wanted to ask for some clarification.

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

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

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

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

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

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

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

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

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

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

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

MS. QUINN: Correct.

SEN. VAN de PUTTE: Yes.

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

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

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

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

MS. QUINN: Yes.

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

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

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

MS. QUINN: Yes, I know.

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

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

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

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

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

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

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

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

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

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

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

What did I do with that? Here we go.

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

SEN. VAN de PUTTE: That's correct.

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

MS. QUINN: Thank you very much.

SEN. VAN de PUTTE: Thanks.

SEN. DUNCAN: Sen. Williams.

SEN. WILLIAMS: Thank you, Mr. Chairman.

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

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

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

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

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

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

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

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

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

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

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

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

MS. QUINN: Yes.

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

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

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

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

SEN. WILLIAMS: Yes.

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

SEN. WILLIAMS: Right.

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

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

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

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

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

MS. QUINN: Thank you, Senator.

SEN. DUNCAN: Thank you, Sen. Williams.

MS. QUINN: Thank you, sir.

SEN. DUNCAN: Thank you, Sen. Wentworth.

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

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

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

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

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

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

SEN. WEST: Mr. President --

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

SEN. DUNCAN: Hans von Spakovsky.

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

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

SEN. WENTWORTH: Yes, sir.


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

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

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

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

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

(Exhibit No. 19 marked and admitted)


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

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

SEN. LUCIO: I would like.

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

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

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

SEN. DUNCAN: Sen. Shapleigh?

SEN. SHAPLEIGH: Mr. Chair,

Sen. Wentworth's offer of that letter has jogged my memory. Here are letters from the Brennan Center against Mr. Spakovksy, members, signed by one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen -- seventeen members of Congress against his nomination,

letters from Common Cause against his nomination,

letters from the Civil Rights Committee -- Lawyers Civil Rights Committee against his nomination -- letters by the Campaign for Legal Center and Common Cause against his nomination and letters from the members of the United States -- I'm sorry -- from the Campaign Legal Center that I would like to include in the record, to make it more complete, as Exhibit 19.

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

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

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

(Exhibit No. 20 marked and admitted)

SEN. WENTWORTH: Mr. Chairman?

SEN. DUNCAN: Sen. Wentworth.

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

SEN. DUNCAN: You have the floor.

SEN. WENTWORTH: One letter is co-signed by six members of Congress, recommending his nomination to the Federal Election Commission. We have letters from the Secretary of State of Kentucky; Secretary of State of Indiana; the County Clerk of Harris County, Texas; the Chairman of the Forsyth County Board of Elections in Georgia; Mr. P. K. Brunelli with the Federal Voting Assistance Program of the Department of Defense at the Pentagon; from Mr. Wendron Close from the United Kingdom; from Tom Lowe, Fulton County Commissioner in Georgia; Mr. Frank Strickland, who is Chairman of the Board of Directors of the Legal Services Corporation; United States
SENATOR JOHNNY ISAKSON; T. ROGERS WADE, PRESIDENT OF
THE GEORGIA PUBLIC POLICY FOUNDATION; WESLEY KLINER,
VICE CHAIRMAN OF THE UNITED STATES ELECTION ASSISTANCE
COMMISSION BOARD OF ADVISORS; AND, FINALLY, RAY
MARTINEZ III, FORMER COMMISSIONER OF THE UNITED STATES
ELECTION ASSISTANCE COMMISSION.

THANK YOU, MR. CHAIRMAN.

SEN. DUNCAN: IT WILL BE SUBMITTED.

RECORD NOTED.

MEMBERS, OUR NEXT WITNESS IS DR. TOBY
MOORE. WILL MR. MOORE STEP UP.

AND YOU HAVE 10 MINUTES, MR. MOORE.

THANK YOU.

DR. MOORE: THANK YOU. AND THANK YOU TO
THE SENATORS FOR THE OPPORTUNITY TO SPEAK TO YOU
TODAY.

SEN. DUNCAN: YOU NEED TO STATE YOUR
NAME, TOO, AND WHO YOU ARE REPRESENTING.

TESTIMONY BY TOBY MOORE

DR. MOORE: MY NAME IS TOBY MOORE, AND
I'M A PROJECT DIRECTOR IN ELECTIONS RESEARCH FOR THE
RESEARCH TRIANGLE INSTITUTE, A NON-PROFIT,
NON-PARTISAN RESEARCH INSTITUTE. I'M SPEAKING ON MY
OWN BEHALF TODAY.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you.

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

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

QUESTIONS FROM SENATE FLOOR

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

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

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

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

And I think it's telling that the