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

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

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

SEN. VAN de PUTTE: Thank you.

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

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

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

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

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

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

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

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

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

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

DR. MOORE: That's correct.

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

DR. MOORE: No.

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

DR. MOORE: That's correct.

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

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

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

DR. MOORE: That's right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

    SEN. VAN de PUTTE: Thank you,
Dr. Moore. I appreciate your answers.

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

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

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

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

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

    Senator Williams, you have the floor.

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

SEN. WILLIAMS: Sure.

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

(Exhibit No. 21 marked and admitted)

SEN. DUNCAN: Sen. Williams.

SEN. WILLIAMS: Thank you.

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

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

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

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

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

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

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

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

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

And so it seems to me that the Court directly addressed that balancing act that you're talking about between the risk of disenfranchising people, which none of us want to do on this floor, and the risk of having an election stolen by false voting, voter impersonation or other things that may go on.

And I don't know. Maybe you don't realize that this bill that we're considering contains -- you know, we already have in state law
provisional voting requirements that are consistent with the HAVA requirements. So there is no instance where someone would not be able to go in and cast a ballot under this bill. Are you aware of that?

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

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

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

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

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

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

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

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

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

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

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

Thank you.

SEN. DUNCAN: The Chair recognizes
Sen. Gallegos.

SEN. GALLEGOS: Thank you, Mr. Chairman.

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

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

SEN. GALLEGOS: Give one to Dr. Moore.

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

(Exhibit No. 22 marked and admitted)

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

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

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

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

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

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

If we pass the bill, as what you see on that map that I just gave you, Dr. Moore, and the other cities that I described, which inside those 610 loops, the majority of the population is minority in those cities. In looking at preliminary numbers that I've already gotten on total population, in the last 10 years, in Houston, Texas, from 2000 to upcoming 2010 when the census is taken, just in Houston alone the preliminary numbers are 1.1 million in the last 10 years, the majority of those Latino, in Houston -- in
So with that in mind, Dr. Moore, what I would like to ask you is, do you believe that if there's no DPS centers, were this bill by Sen. Fraser, if there's no DPS centers in that 610 loop, that that will become a hardship -- if the state mandates for a photo ID and I, living inside the loop, without a car, public transportation only, it's going to create a hardship for me to get to that DPS center, especially if there's none inside the 610 loop in Houston, in Fort Worth, only one in Dallas, Texas. And that's going to create a hardship for me as living inside the city, low income, try to catch public transportation and at least try to get to one of these that are outside the loop. Let me ask you, in your professional opinion, Dr. Moore, do you consider that a hardship for those people living in there if we pass this piece of legislation, that creates a hardship on these people?

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

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

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

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

SEN. GALLEGOS: Thank you, Dr. Moore.


SEN. SHAPLEIGH: Thank you, Mr. Chair.

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

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

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

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

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

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

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

DR. MOORE: I was Project Manager after the release of the study. So I managed the follow-up
work.

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

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

On the other hand, Hispanic citizens may have higher levels of documentation, because they need to prove their citizenship where they have gone through the naturalization. There are a lot of
variables in that. But we just don't know for
Hispanics how many people don't have an ID.

SEN. SHAPLEIGH: Are you familiar with

the Texas colonias?

DR. MOORE: Very little.

SEN. GALLEGOS: Thank you.

SEN. DUNCAN: Thank you, Dr. Moore.

There are no other witnesses or members

queued up, so you are excused.

The next witness is Dr. Frank

Strickland.

Dr. Strickland, you will approach, state

your name and who you represent. Turn your testimony

over to the -- written testimony, if any.

Do we have that?

I'll go ahead and introduce that as

Exhibit 23, would be the testimony of Frank B.

Strickland.

(Exhibit No. 23 marked and admitted)

SEN. DUNCAN: State your name, please,

and who you represent. You have 10 minutes.

TESTIMONY BY FRANK B. STRICKLAND

MR. STRICKLAND: Thank you,

Mr. Chairman. And, by the way, it's not

Dr. Strickland.
Sen. Duncan and members of the Senate,

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

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

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

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

As a result of federal court litigation
before United States District Judge Harold Murphy in
Rome, Georgia, the law was changed in 2006 to provide
for the issuance of a free photo ID card at any
registrar's office in one of Georgia's 159 counties.

Notwithstanding the availability of a
free photo ID to anyone who did not have another
acceptable form of identification, the 2006 statute
was also litigated before Judge Murphy in a case
entitled Common Cause vs. Billups which is found at
504 F.Supp. 1333. Judge Murphy was a Carter appointee
to the federal bench, and he recognized the state's
interest in passing a photo identification law to prevent fraud when he said -- and I quote -- "Additionally, Plaintiffs have failed to demonstrate that the Photo ID requirement is not reasonably related to the state's interest in preventing fraud in voting."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. STRICKLAND: All right, sir.

SEN. DUNCAN: We have Sen. Watson.

**QUESTION FROM SENATE FLOOR**

SEN. WATSON: Welcome to Texas.

MR. STRICKLAND: Thank you, sir.

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

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

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

SEN. DUNCAN: Sen. Williams.

SEN. WILLIAMS: Thank you.

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

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

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

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

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

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

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

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

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

MR. STRICKLAND: Yes, generally speaking.

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

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

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

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

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

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

SEN. WILLIAMS: Okay.

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

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

MR. STRICKLAND: No question.

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

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

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

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

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

MR. STRICKLAND: I noticed that.

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

SEN. WHITMIRE: Mr. President, Chairman?


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

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

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

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

SEN. OGDEN: I yield to Sen. Whitmire.

SEN. DUNCAN: Senator Whitmire.

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

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

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

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

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

MR. STRICKLAND: -- incidental.

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

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

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

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

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

SEN. WILLIAMS: I'll put it in.

SEN. WHITMIRE: Beg your pardon?

SEN. WILLIAMS: I'll put it in.

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

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

SEN. DUNCAN: Sen. Ogden.

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

Is that right?

MR. STRICKLAND: That's pretty close.

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

MR. STRICKLAND: Correct.

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

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

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

SEN. OGDEN: Okay. Thank you.
SEN. DUNCAN: Sen. Ellis.
SEN. ELLIS: Thank you, Mr. Strickland;

thank you for being here.

Briefly, you mentioned some 89 or 75
provisional ballots, I think. I can't remember the
number.

MR. STRICKLAND: 93.
SEN. ELLIS: 93 that were --
MR. STRICKLAND: What I said was, there
were 93 persons out of over 400,000 in Fulton County
that did not have an acceptable form of photo ID.

SEN. ELLIS: And you said under your
statute in Georgia, they have 48 hours --

MR. STRICKLAND: Correct.
SEN. ELLIS: -- to bring something to
prove they are that person, only one person came in?
MR. STRICKLAND: Right.

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

MR. STRICKLAND: Not to my knowledge.

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

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

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

SEN. OGDEN: Okay. Thank you for
coming.

MR. STRICKLAND: Thank you, sir.

SEN. DUNCAN: Sen. Hinojosa.

SEN. HINOJOSA: Thank you, Mr. Chairman.

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

MR. STRICKLAND: I don't.

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

MR. STRICKLAND: Poll watchers?

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

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

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

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

MR. STRICKLAND: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

    SEN. HINOJOSA: Thank you.

    SEN. DUNCAN: Sen. Watson.

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

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

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

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

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

MR. STRICKLAND: Yes.

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

MR. STRICKLAND: I am familiar with that.

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

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

MR. STRICKLAND: No knowledge of that.

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

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

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

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

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

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

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

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

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

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

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

MR. STRICKLAND: That sounds about right.

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

MR. STRICKLAND: I do not.

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

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

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

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

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

Appreciate your being here tonight.

Thank you very much.

MR. STRICKLAND: Thanks so much.

SEN. DUNCAN: The Chair recognizes Sen. Uresti.

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

MR. STRICKLAND: Thank you, sir.

SEN. URESTI: Thank you for being here. I know you've come a long way, and we do appreciate your testimony.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. STRICKLAND: Well, it certainly could be.

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

MR. STRICKLAND: Thank you, Senator.

SEN. DUNCAN: Thank you, Mr. Strickland.

There are no other members queued up to speak, so you will be excused. Appreciate your testimony.

MR. STRICKLAND: Thank you, sir.

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

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

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

MR. SKAGGS: Yes, sir.

SEN. DUNCAN: Okay. We'll go ahead and

put that in the record.

(Exhibit No. 24 marked and admitted)

SEN. DUNCAN: And then if you will state

your name and who you represent. You have 10 minutes.

TESTIMONY BY ADAM SKAGGS

MR. SKAGGS: Certainly. Thank you,

Mr. Chairman.

My name is Adam Skaggs. I am counsel at

the Brennan Center for Justice at NYU School of Law in

New York City. Brennan Center is a non-profit,

non-partisan public policy and legal advocacy

organization, and we focus on fundamental issues of

justice and democracy. Among other things, we promote

policies that ensure fair and accurate elections and

that maximize citizen participation in the electoral

process. Our work toward these goals has included

extensive research and the publication of studies and

reports, assistance to state and federal policymakers

and advice on electoral legislation and, when it's

become necessary, participation in litigation to

protect the fundamental right to vote.

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

A central part of these efforts has been our research on allegations of voter fraud. We've analyzed claims of rampant voter fraud in order to distinguish unfounded and exaggerated tales of fraud from reliable, verified claims of election misconduct. We published the results of this analysis in a monograph entitled "The Truth About Voter Fraud," which compiles methodological flaws that have led to allegations of voter fraud and debunks baseless -- though often repeated -- reports of voter fraud. In my testimony today, I want to share some of our findings.

Our findings illustrate the SB 362 makes little sense as a matter of policy, for three reasons. First, SB 362 does not fix any notable problem that Texans have experienced. Second, to bolster their case, supporters of SB 362 cite a number of problems that the bill would not correct and would not address, and that misleads the public into thinking that the
proposal would accomplish more than it ever possibly could.

The last and perhaps the most important reason that SB 362 is likely to create problems, the problems it creates are going to be far worse than the single problem that it even has the potential to cure. Some of my colleagues have already discussed that third issue. I'll focus my testimony on the first two.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

QUESTIONS FROM SENATE FLOOR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. SKAGGS: No.

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

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

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

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

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

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

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

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

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

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

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

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

SEN. DAVIS: Very good point.

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

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

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

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

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

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

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

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

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

MR. SKAGGS: I am aware of one study in particular on that subject. We've heard about it from
a couple of the folks that have testified here before this evening, and that's a study that was published in the Harvard Law Review not long ago. And the conclusion that came to was that there was simply no correlation, there was no increase in voting based on any feelings of the possibility of fraud or the possibility that fraud would be addressed by voter ID.

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

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

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

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

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

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

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

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

But these sorts of claims, this 5,000 number was latched onto by elected officials, advocates, partisans, and was repeatedly trumpeted. And, of course, once the careful analysis is done and once each of these cases is looked at and it turns out that, in fact, there really is no problem, oftentimes those reports and those studies don't get as much air play.

SEN. DAVIS: You've mentioned the
Indiana experience in your comments and in your
answers to my questions today. But even Appeals Judge
Posner, an outspoken conservative appointee, said in
his Opinion upholding the Indiana photo ID law -- and
I quote him -- "No doubt, most people who don't have
photo ID are low on the economic ladder and, thus, if
they do vote, are more likely to vote for Democratic
than Republican candidates. Thus, the new law injures
the Democratic Party by compelling the party to devote
resources to getting to the polls those of its
supporters who would otherwise be discouraged by the
new law from bothering to vote," end quote.

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

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

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

SEN. DAVIS: Thank you very much for your testimony and your answer to my questions.

I have no more questions for this witness, Mr. President.

SEN. DUNCAN: Thank you, Mr. Skaggs.

There are no other members queued up, so you are excused. Thank you for your appearance here today.

MR. SKAGGS: Thank you, Mr. Chairman.

SEN. DUNCAN: The Chair calls Wes Tailor.

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

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

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

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

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

(Exhibit No. 25 marked and admitted)

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

MR. TAILOR: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you.

SEN. DUNCAN: Thank you, Mr. Tailor.

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

MR. TAILOR: Thank you.

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

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

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

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

TESTIMONY BY J. GERALD HEBERT

MR. HEBERT: My name is Joe Hebert, and I'm a voting rights attorney. I'm also Executive Director and Director of Litigation at the campaign legal center. Today I am here representing myself.

I've spent over 20 years at the U. S. Department of Justice as a federal prosecutor of voting rights cases. I've taught courses on voting rights at Georgetown Law School and University of Virginia, among other schools.

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

(Appplause from the gallery)

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

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

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

You can proceed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you.

QUESTIONS FROM SENATE FLOOR
SEN. DUNCAN: The Chair recognizes
Sen. West.
SEN. WEST: Thank you very much,
Mr. Chairman.
Mr. Hebert, as it relates to
non-citizens, what about those who claim that
non-citizens are on the voters roll and will a voter
ID law for voting stop that?
MR. HEBERT: A photo ID bill will not
affect that whatsoever. Right now you don't have to
be a citizen to get a driver's license. Many people
who are non-citizens, if they end up on the rolls --
and this has been true in not only Texas, it's true in
other states -- that they go to get a driver's license and there is a -- in many places, you automatically get put on the voter registration rolls if you check a box that says, "Do you want this to double as a voter registration application?" So they end up being on the rolls.

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

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

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

SEN. WEST: No photo ID?

MR. HEBERT: Yes, no photo ID.

SEN. WEST: How does the legal --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEN. DUNCAN: Sen. Wentworth.

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

MR. HEBERT: Thank you, Senator.

SEN. WENTWORTH: Welcome back, I should
say.

MR. HEBERT: Yes, sir.

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

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

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

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

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

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

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

MR. HEBERT: You had 30, I believe.
SEN. WENTWORTH: Yes, sir, we had 30.

Do you remember the partisan division of those 30?

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

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

MR. HEBERT: Prior to 2000?

SEN. WENTWORTH: Yes, sir.

MR. HEBERT: Okay.

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

MR. HEBERT: I remember that.

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

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

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

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

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

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

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

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

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

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

But they looked out to the Panhandle and realized that Bob Price from Pampa had his congressional district right next to Wichita Falls, which had as its congressman a Democrat, Graham Purcell, who chaired the House Agriculture Committee. And so the Democratic majority in the Legislature
decided that those farmers and ranchers in West Texas would vote for the Chairman of the House Ag Committee, so they paired, intentionally paired those two congressmen to run against each other.

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

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

I appreciate you being here.

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

SEN. DUNCAN: Senator Hegar.

SEN. HEGAR: Thank you, Mr. Chairman.

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

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

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

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

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

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

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

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

MR. HEBERT: Well, they were --

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

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

SEN. HEGAR: Please; please.

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

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

MR. HEBERT: Several feet --

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

SEN. HEGAR: Okay.

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

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

MR. HEBERT: Well, yes.

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

MR. HEBERT: Well, the explanation by the investigators was almost as bad as the offense, because when she protested to them, they said, "Oh, I'm sorry. We thought we were looking in your kitchen
"window." So I don't know that investigators --

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

MR. HEBERT: Yes, they did.

SEN. HEGAR: At least I hope so.

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

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

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

SEN. HEGAR: Okay.

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

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

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

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

MR. HEBERT: No, no.

SEN. HEGAR: Okay.

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

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

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

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

SEN. HEGAR: Okay. Well, good. I just
wanted to make sure I had that. And then one other
thing, since you brought up Waller County, and Waller
County is a little near and dear to me, since I'm a
lifelong resident of Waller County. And I wanted to
make sure that I understood exactly what you're
talking about when you were talking about Waller
County, if that was in regards to voter eligibility of
students at Prairie View campus several years back and
to make sure that -- I think Sen. Ellis had asked for
back then in maybe '04, if I remember correctly, for
some kind of statement to clearly state from the
Attorney General what the definition of the law was
and that people who reside in a county, intend to
reside there, they do reside there, they're eligible
to vote. And that was clearly demonstrated in the
Opinion that was given to Sen. Ellis at that time. Is
that the situation that you were talking about?

MR. HEBERT: The situation in Waller
County for Prairie View students has been going on, as
you correctly point out --

SEN. HEGAR: Trust me. I've lived there
all my life.

MR. HEBERT: Okay. -- at least since
2004. The issue that I became involved in, and I
represented several of the Prairie View students, was
last year where a number of them were being denied the
right to become deputy registrars, and they were being
denied to register voters without certain burdens
being put on them, like limits of how many
applications and so on.

And when we went to the Justice
Department, as a former official of the Justice
Department, I was able to go to the federal
prosecutors and say, "This is a violation of their
fundamental rights here, and it seems to be race-
based." And the Justice Department, to their
credit -- you know, I didn't give the Bush
Administration much credit for prosecuting voting
rights cases on behalf of African-Americans -- but
they stepped up and Waller County signed a
SEN. HEGAR: Very comprehensive.

MR. HEBERT: -- admitting violations.

And --

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

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

SEN. HEGAR: Correct; correct.

MR. HEBERT: -- and talk --

SEN. HEGAR: Correct; correct.

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

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

MR. HEBERT: Thank you.

SEN. HEGAR: Thank you very much.

MR. HEBERT: Thank you, Senator.

SEN. DUNCAN: The Chair recognizes Sen. Shapleigh.

SEN. SHAPLEIGH: Thank you, Mr. Chair.

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

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

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

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

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

MR. HEBERT: Willie Ray was my client.

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

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

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

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

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

MR. HEBERT: That's correct.

SEN. SHAPLEIGH: Thank you.

SEN. DUNCAN: Sen. Williams.

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

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

In Texas it's "He-bert."

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

MR. HEBERT: That is correct.

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

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

SEN. WILLIAMS: What was it, then?

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

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

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

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

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

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

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

SEN. WILLIAMS: I see.

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

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

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

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

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

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

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

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

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

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

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

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

SEN. WILLIAMS: Okay. Thank you.

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

SEN. LUCIO: Mr. President?

SEN. DUNCAN: -- ask the Committee --

Sen. Lucio?

SEN. LUCIO: I had asked you earlier --

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

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

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

SEN. DUNCAN: Okay. And it's from whom?

SEN. LUCIO: It is from Rene Guerra, Criminal District Attorney, Hidalgo County, Texas.

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

(Exhibit No. 27 marked and admitted)

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

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

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

STATE OF TEXAS  
COUNTY OF TRAVIS  

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

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

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

[Signature]

Aloma J. Kennedy  
Certified Shorthand Reporter  
CSR No. 494 - Expires 12/31/10

Firm Certification No. 276  
Kennedy Reporting Service, Inc.  
Cambridge Tower  
1801 Lavaca Street, Suite 115  
Austin, Texas 78701  
512.474.2233
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

WEDNESDAY, MARCH 11, 2009

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

KENNEDY
REPORTING
SERVICE

a record of excellence
1801 Lavaca • Suite 115 • Austin, Texas 78701 • 512-474-2233

ORIGINAL

JA_003782
# TABLE OF CONTENTS

## VOLUME 1A

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>PROCEEDINGS, TUESDAY, MARCH 10, 2009</td>
<td>2</td>
</tr>
<tr>
<td>ROLL CALL NO. 1</td>
<td>2</td>
</tr>
<tr>
<td>OPENING INSTRUCTIONS BY SEN. DUNCAN</td>
<td>5</td>
</tr>
<tr>
<td>OBJECTION TO FURTHER CONSIDERATION OF SB 362 (SEN. WEST)</td>
<td>12</td>
</tr>
<tr>
<td>ROLL CALL NO. 2</td>
<td>38</td>
</tr>
<tr>
<td>LAYING OUT OF SENATE BILL 362 (SEN FRASER)</td>
<td>44</td>
</tr>
<tr>
<td>QUESTIONS FROM SENATE FLOOR</td>
<td>53</td>
</tr>
</tbody>
</table>

## VOLUME 1B

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>INVITED TESTIMONY</td>
<td>210</td>
</tr>
<tr>
<td>TESTIMONY BY HANS VON SPAKOVSKY</td>
<td>210</td>
</tr>
<tr>
<td>QUESTIONS FROM SENATE FLOOR</td>
<td>218</td>
</tr>
<tr>
<td>TESTIMONY BY TOVA ANDREA WANG</td>
<td>277</td>
</tr>
<tr>
<td>QUESTIONS FROM SENATE FLOOR</td>
<td>287</td>
</tr>
<tr>
<td>TESTIMONY BY CAMERON QUINN</td>
<td>300</td>
</tr>
<tr>
<td>QUESTIONS FROM SENATE FLOOR</td>
<td>306</td>
</tr>
<tr>
<td>TESTIMONY BY TOBY MOORE</td>
<td>336</td>
</tr>
<tr>
<td>QUESTIONS FROM SENATE FLOOR</td>
<td>344</td>
</tr>
<tr>
<td>TESTIMONY BY FRANK B. STRICKLAND</td>
<td>373</td>
</tr>
<tr>
<td>QUESTIONS FROM SENATE FLOOR</td>
<td>417</td>
</tr>
<tr>
<td>TESTIMONY BY ADAM SKAGGS</td>
<td>408</td>
</tr>
<tr>
<td>QUESTIONS FROM SENATE FLOOR</td>
<td>417</td>
</tr>
<tr>
<td>TESTIMONY OF ROBERT A. SIMMS SUBMITTED BY WES TAILOR</td>
<td>435</td>
</tr>
<tr>
<td>TESTIMONY BY J. GERALD HEBERT</td>
<td>442</td>
</tr>
<tr>
<td>QUESTIONS FROM SENATE FLOOR</td>
<td>450</td>
</tr>
</tbody>
</table>
TABLE OF CONTENTS

VOLUME 2

PROCEEDINGS, WEDNESDAY, MARCH 11, 2009

QUESTIONS FROM SENATE FLOOR (CONTINUED) ........................................... 482

TESTIMONY BY THOMAS WHEELER ............................................................... 502
QUESTIONS FROM SENATE FLOOR ............................................................... 510

TESTIMONY BY CHANDLER DAVIDSON ....................................................... 521
QUESTIONS FROM SENATE FLOOR ............................................................... 527

TESTIMONY BY ED JOHNSON .................................................................... 559
QUESTIONS FROM SENATE FLOOR ............................................................... 566

TESTIMONY BY DANIEL B. KOHRMAN ....................................................... 621
QUESTIONS FROM SENATE FLOOR ............................................................... 628

TESTIMONY BY COBY SHORTER ............................................................... 653
QUESTIONS FROM SENATE FLOOR ............................................................... 655

TESTIMONY BY DENNIS BOREL ................................................................. 706
QUESTIONS FROM SENATE FLOOR ............................................................... 713

TESTIMONY BY GARY GLEDSOE ............................................................... 724
QUESTIONS FROM SENATE FLOOR ............................................................... 731

TESTIMONY BY ERIC NICHOLS ................................................................. 742
QUESTIONS FROM SENATE FLOOR ............................................................... 750

PUBLIC TESTIMONY ................................................................................. 771

CLAIRe OXLEY GLUCK .............................................................................. 771

HAZEL COTTON ......................................................................................... 773
QUESTIONS FROM SENATE FLOOR ............................................................... 775

KATHY HICKS ............................................................................................ 776

JAMES E. CARTER ....................................................................................... 779

RUSTY HICKS ............................................................................................. 781

KENNEDY REPORTING SERVICE, INC.
512.474.2233

TX_00004361
JA_003784
TABLE OF CONTENTS

PUBLIC TESTIMONY (CONTINUED)  

<table>
<thead>
<tr>
<th>Name</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>TINA BENKISER</td>
<td>784</td>
</tr>
<tr>
<td>B. R. SKIPPER WALLACE</td>
<td>787</td>
</tr>
<tr>
<td>ANITA PRIVETT</td>
<td>789</td>
</tr>
<tr>
<td>MARY ANN COLLINS</td>
<td>792</td>
</tr>
<tr>
<td>ROSA ROSALES</td>
<td>794</td>
</tr>
<tr>
<td>QUESTIONS FROM SENATE FLOOR</td>
<td>797</td>
</tr>
<tr>
<td>DUSTIN RYNDERS</td>
<td>800</td>
</tr>
<tr>
<td>MARSHA CORREIRA</td>
<td>803</td>
</tr>
<tr>
<td>QUESTIONS FROM SENATE FLOOR</td>
<td>806</td>
</tr>
<tr>
<td>RENE LARA</td>
<td>807</td>
</tr>
<tr>
<td>LEE MEDLEY</td>
<td>810</td>
</tr>
<tr>
<td>JOHN WATKINS</td>
<td>811</td>
</tr>
<tr>
<td>KENNETH FLIPPE</td>
<td>813</td>
</tr>
<tr>
<td>ANNIE BANKS</td>
<td>816</td>
</tr>
<tr>
<td>RACHEL HERNANDEZ</td>
<td>817</td>
</tr>
<tr>
<td>RENATO DE LOS SANTOS</td>
<td>819</td>
</tr>
<tr>
<td>JUDY HOLLOWAY</td>
<td>823</td>
</tr>
<tr>
<td>LYDIA CAMARILLO</td>
<td>825</td>
</tr>
<tr>
<td>EDWARD B. WILLIAMS</td>
<td>828</td>
</tr>
<tr>
<td>MADELEINE DEWAR</td>
<td>830</td>
</tr>
<tr>
<td>HELEN VILLARREAL</td>
<td>833</td>
</tr>
<tr>
<td>MARK WILLIAMSON</td>
<td>835</td>
</tr>
<tr>
<td>VANESSA FOSTER</td>
<td>838</td>
</tr>
<tr>
<td>LUIS FIGUERO</td>
<td>840</td>
</tr>
<tr>
<td>QUESTIONS FROM SENATE FLOOR</td>
<td>844</td>
</tr>
<tr>
<td>PATTI EDELMAN</td>
<td>844</td>
</tr>
<tr>
<td>SYLVIA MENDOZA</td>
<td>846</td>
</tr>
<tr>
<td>KENNETH KOYM</td>
<td>848</td>
</tr>
<tr>
<td>KAREN RENICK</td>
<td>850</td>
</tr>
<tr>
<td>JONI ASHBROOK</td>
<td>853</td>
</tr>
<tr>
<td>DUANE RAWSON</td>
<td>856</td>
</tr>
<tr>
<td>ROD FLUKER</td>
<td>858</td>
</tr>
<tr>
<td>ROLL CALL NO. 3</td>
<td>864</td>
</tr>
<tr>
<td>PROCEEDINGS CONCLUDED</td>
<td>869</td>
</tr>
</tbody>
</table>

KENNEDY REPORTING SERVICE, INC.  
512.474.2233  
TX_00004362  
JA_003785
## EXHIBIT INDEX

<table>
<thead>
<tr>
<th>MARKED</th>
<th>ADMITTED</th>
</tr>
</thead>
<tbody>
<tr>
<td>21</td>
<td>21</td>
</tr>
<tr>
<td>21</td>
<td>21</td>
</tr>
<tr>
<td>21</td>
<td>21</td>
</tr>
<tr>
<td>21</td>
<td>21</td>
</tr>
</tbody>
</table>

1A Sen. Van de Putte 3/3/09 Memo to Sen. Duncan re ground rules for Committee of the Whole Pubic hearing

1B Sen. Duncan 3/5/09 Memo to Sen. Van de Putte re response to concerns about ground rules for the Committee of the Whole Senate

2. Letter to Texas Attorney General Greg Abbott re: Hearing on SB 362, signed by 11 Senators

3. Senate Notice of Public Hearing on SB 362 for 3/10/09

4. Texas Senate Agenda, 3/10/09

5A 3/10/09 Tag Form signed by Sen. Royce West, et al

5B 3/10/09 Tag Form signed by Sen. Mario Gallegos

6. Roll Call No. 2 - Sen. Gallegos' Appeal of Ruling of Chair on Sen. West's Point of Order

<table>
<thead>
<tr>
<th></th>
<th>EXHIBIT INDEX (continued)</th>
<th>MARKED</th>
<th>ADMITTED</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.</td>
<td>AU News publication entitled &quot;Much-hyped Turnout Record Fails to Materialize - Convenience Voting Fails to Boost Balloting&quot;</td>
<td>120</td>
<td>120</td>
</tr>
<tr>
<td>10.</td>
<td>9/10/07 Report of the Heritage Center for Data Analysis entitled &quot;New Analysis Shows Voter Identification Laws Do Not Reduce Turnout&quot; by David B. Muhlhausen and Keri Weber Sikich</td>
<td>120</td>
<td>120</td>
</tr>
<tr>
<td>13.</td>
<td>2/3/08 article entitled &quot;A Clearer Picture on Voter ID&quot; by Jimmy Carter and James A. Baker III</td>
<td>160</td>
<td>160</td>
</tr>
</tbody>
</table>
## EXHIBIT INDEX (continued)

<table>
<thead>
<tr>
<th>MARKED</th>
<th>ADMITTED</th>
</tr>
</thead>
<tbody>
<tr>
<td>254</td>
<td>254</td>
</tr>
<tr>
<td>254</td>
<td>254</td>
</tr>
<tr>
<td>254</td>
<td>254</td>
</tr>
<tr>
<td>265</td>
<td>265</td>
</tr>
<tr>
<td>300</td>
<td>300</td>
</tr>
<tr>
<td>313</td>
<td>313</td>
</tr>
</tbody>
</table>

1. 15A 6/11/07 Letter to Senate Committee on Rules and Administration re Hans A. von Spakovsky nomination
2. 15B 6/12/07 Article entitled "Obama Raises Concerns Over FEC Nominee's Record of Partisanship"
3. 15C 10/3/07 Letter to the U.S. Senate from Public Citizen
5. 17. Testimony of Tova Andrea Wang, Vice President, Research Common Cause, March 10, 2009, re SB 362
EXHIBIT INDEX (continued)

MARKED ADMITTED

19. Fifteen letters to the Hon. Dianne Feinstein, Chair, and the Hon. Robert F. Bennett, ranking minority member, U.S. Senate Committee on Rules and Administration:

1. 6/29/07 letter from Hans A. von Spakovsky
2. 3/22/07 letter from various members of Congress
3. 3/13/07 letter from William H. Jordan
4. 2/08/07 letter from Gary J. Smith
5. 2/26/07 letter from P. K. Brunelli
6. 3/01/07 letter from J. A. Borras
7. 2/21/07 letter from Trey Grayson
8. 2/20/07 letter from Beverly B. Kaufman
9. 2/19/07 letter from Todd Rokita
10. 2/16/07 letter from Frank B. Strickland
11. 2/14/07 letter from Tom Lowe
12. 2/13/07 letter from T. Rogers Wade
13. 2/14/06 letter from Johnny Isakson
14. 2/09/07 letter from Wesley R. Kliner, Jr.
15. 3/13/07 letter from Ray Martinez III

20. Brennan Center For Justice letter dated October 3, 2007, by Executive Director Michael Waldman, with attachments

KENNEDY REPORTING SERVICE, INC.
512.474.2233

TX_00004366
JA_003789
<table>
<thead>
<tr>
<th>EXHIBIT INDEX (continued)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MARKED</strong></td>
</tr>
<tr>
<td>22. Harris County Map submitted by Sen. Gallegos</td>
</tr>
<tr>
<td>23. Testimony of Frank B. Strickland re SB 362 March 10, 2009</td>
</tr>
<tr>
<td>24. Testimony of Adam Skaggs, Counsel, Democracy Program, Brennan Center for Justice at NYU School of Law, regarding The Myth of Voter Impersonation Fraud at the Polls March 10, 2009</td>
</tr>
<tr>
<td>25. Written Testimony of Robert A. Simms, Georgia Deputy Secretary of State, presented to the United States Senate Committee on Rules and Administration, submitted by Wes Tailor</td>
</tr>
<tr>
<td>26. Testimony of J. Gerald Hebert re SB 362, March 10, 2009</td>
</tr>
<tr>
<td>27. Letter from Rene Guerra (March 6, 2009) Criminal District Attorney of Hidalgo County, Submitted by Sen. Lucio</td>
</tr>
<tr>
<td>28. 3/4/09 Letter from Todd Rokita, Indiana Secretary of State, to Sen. Fraser re SB 362</td>
</tr>
<tr>
<td>Marked</td>
</tr>
<tr>
<td>--------</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>29.</td>
</tr>
<tr>
<td>31.</td>
</tr>
<tr>
<td>32.</td>
</tr>
<tr>
<td>33.</td>
</tr>
<tr>
<td>34.</td>
</tr>
<tr>
<td>35.</td>
</tr>
<tr>
<td>36.</td>
</tr>
<tr>
<td>37.</td>
</tr>
</tbody>
</table>
### EXHIBIT INDEX (continued)

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>38.</td>
<td>Number of voters who have registered since 2006 without a driver's license number, submitted by Sen. Watson</td>
</tr>
<tr>
<td>39.</td>
<td>The Special Investigations Unit Role and Investigative Efforts and Funding, submitted by Sen. Huffman</td>
</tr>
<tr>
<td>40.</td>
<td>Slip Opinion, U.S. Supreme Court, Crawford vs. Marion County Election Board, October Term, 2007</td>
</tr>
<tr>
<td>41.</td>
<td>U.S. Supreme Court, Crawford vs. Marion County Election Board, on Writ of Certiorari to U.S. Court of Appeals for the Seventh Circuit, Brief of Texas, Alabama, Colorado, Florida, Hawaii, Michigan, Nebraska, Puerto Rico and South Dakota, as Amici Curiae Supporting Respondents</td>
</tr>
<tr>
<td>42.</td>
<td>Written Testimony of Claire Oxley Gluck from Boerne, in Kendall County, re SB 362</td>
</tr>
<tr>
<td>43.</td>
<td>Written Testimony of Hazel Cotton of Texarkana, Texas re SB 362</td>
</tr>
<tr>
<td>44.</td>
<td>Written Testimony of Kathy Hicks of Texarkana, Texas re SB 362</td>
</tr>
<tr>
<td>45.</td>
<td>Written Testimony of Donald Giles of Texarkana, Texas re SB 362</td>
</tr>
<tr>
<td>46.</td>
<td>Written Testimony of Anita Privett, League of Women Voters of Texas, re SB 362</td>
</tr>
<tr>
<td>Exhibit</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>47.</td>
<td>Written Testimony of Rosa Rosales, League of United Latin American Citizens, National President re SB 362</td>
</tr>
<tr>
<td>48.</td>
<td>Written Testimony of Dustin Rynders, Advocacy, Inc., re SB 362</td>
</tr>
<tr>
<td>49.</td>
<td>Written Testimony of Marsha Correira re SB 362</td>
</tr>
<tr>
<td>50.</td>
<td>Written Testimony of Rachel A. Hernandez re SB 362</td>
</tr>
<tr>
<td>51.</td>
<td>10/17/08 Article by Nelda Wells Spears, Voter Registrar, Travis County, entitled &quot;40,000 Voter Registration Applications Processed in Time For Early Voting&quot;</td>
</tr>
<tr>
<td>52.</td>
<td>Written Testimony of Lydia Camarillo, SVREP Vice President, re SB 362</td>
</tr>
<tr>
<td>53.</td>
<td>Written Testimony of Luis Figueroa, Mexican American Legal Defense and Education Fund (MALDEF), re SB 362</td>
</tr>
<tr>
<td>54.</td>
<td>Written Testimony of Sylvia Mendoza re SB 362</td>
</tr>
<tr>
<td>55.</td>
<td>Written Testimony of Dr. Rod Fluker, Sr., Executive Director for Texas Association of Black Personnel in Higher Education, re SB 362</td>
</tr>
</tbody>
</table>
SEN. DUNCAN: The Committee of the Whole will come back to order. Members, we -- our very capable court reporter, Ms. Kennedy is -- we're doing a transition, and we let her have the rest of the night off.

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

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

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

(Applause)

SEN. ZAFFIRINI: Thank you.

QUESTIONS FROM SENATE FLOOR (CONTINUED)

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

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

MR. HEBERT: I did see that.

SEN. ZAFFIRINI: Do you believe that fiscal note?

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

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

MR. HEBERT: Well, I think it will cost money because notwithstanding the fact there may some line item in the Secretary of State's budget, I can't believe that there's a line item that would cover the cost of seeking pre-clearance and gathering all of the data necessary, all the staff time to do that; and then to go to the Justice Department, which is going to have a very skeptical eye about this bill. Remember, they recommended -- the career staff recommended that the Georgia map be blocked. And if you read their memo, which is now a matter of public record, there was -- I think there was like 55 single-spaced pages of all of the data that they
forced the State of Georgia to come up with. And even in the end of having them produce all that data, Georgia still couldn't get pre-clearance from the career people.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. HEBERT: No.

SEN. ZAFFIRINI: Thank you very much.

Thank you.

MR. HEBERT: Thank you.

SEN. DUNCAN: The Chair recognizes Sen. Gallegos.

SEN. GALLEGOS: Thank you, Mr. Chairman.

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

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

SEN. GALLEGOS: I understand, but Indiana --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEN. DUNCAN: The Chair recognizes

Sen. Shapiro.

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

MR. HEBERT: Yes.

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

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

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

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

MR. HEBERT: My clients.

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

MR. HEBERT: I did.

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

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

MR. HEBERT: For security purposes.

SEN. SHAPIRO: For security purposes.

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

MR. HEBERT: Correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. HEBERT: Thank you.

SEN. DUNCAN: Thank you.

Mr. Patrick, for what purpose --

Sen. Patrick?

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

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

(Exhibit No. 28 marked and admitted)

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

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

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

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

Let me take to you 2003, Lake County, Indiana, City of East Chicago. Lake County, a pretty industrial area just outside Chicago filled with steel mills and industrial area. The situation is a contested Democratic Primary race for the Mayor of East Chicago. Mr. Pabey, the Police Chief, is running against the long-time Mayor Mr. Pastrick. Mr. Pastrick was actually filmed and documented in a documentary called The King of Steel Town. For those of you who are involved in the election-related issue, it's a fairly fascinating documentary about how to move forward with election fraud.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

QUESTIONS FROM SENATE FLOOR

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

MR. WHEELER: Yes, sir?

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

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

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

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

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

MR. WHEELER: Absolutely we do.

SEN. WHITMIRE: Was anyone prosecuted?

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

SEN. WHITMIRE: Why not?

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

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

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

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

MR. WHEELER: I believe there's a
witness coming up immediately after me that is
familiar with fraud in Texas.

SEN. WHITMIRE: Do you know in that
instance was someone prosecuted?

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

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

Do you have a significant bilingual
speaking population in Indiana?

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

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

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

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

MR. WHEELER: I'm told 36 percent.

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

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

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

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

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

MR. WHEELER: I have no idea.

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

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

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

MR. WHEELER: I think I mentioned --

(Simultaneous discussion)

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

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

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

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

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

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

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

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

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

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

MR. WHEELER: In the Democratic Primary?

SEN. WHITMIRE: Yeah.

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

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

SEN. WHITMIRE: Do you-all have --

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

SEN. WHITMIRE: Yeah.

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

SEN. WHITMIRE: Sure.

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

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

MR. WHEELER: This was Mitch Daniels.

He did --

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

MR. WHEELER: Senator, I did not --

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

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

SEN. WHITMIRE: You went to what?

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

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

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

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

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

MR. WHEELER: Because there was a political compromise.

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

MR. WHEELER: Occasionally.

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

MR. WHEELER: Thank you, Senator.

SEN. DUNCAN: The Chair recognizes Sen. Watson.

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

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

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

MR. WHEELER: Thank you.

SEN. DUNCAN: Thank you, Mr. Wheeler.

There are no other members queued up to ask questions.

MR. WHEELER: Thank you.

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

TESTIMONY BY CHANDLER DAVIDSON

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

(Exhibit No. 29 marked and admitted)

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

MR. DAVIDSON: Honorable Senators, I'm privileged to be here at your invitation. Thank you. Between 1966 and 2003, I taught politics and sociology...
at Rice University and specialized in voting behavior and voting rights.

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

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

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

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

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

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

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

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

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

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

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

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

Moreover, today's Republicans' attempt at justifications of the bill with claims of voter fraud are at least as dubious as those which attempted to justify the now and unconstitutional poll tax at the beginning of the 20th century.
If Texas enacts a photo ID bill, it will join only seven other states that request a photo ID to vote, states disproportionally among the 11 states of the former Confederacy. This, in my opinion, as a scholar whose work is focused on the protection of minority voting rights for more than 40 years, would be an egregious step backward for my native state, one which harks back to the post-reconstruction era disfranchisement whose effects Barbara Jordan and Dr. Lonnie Smith fought with such courage to put behind us. Thank you.

QUESTIONS FROM SENATE FLOOR

SEN. DUNCAN: The Chair recognizes Sen. Shapleigh.

SEN. SHAPLEIGH: Thank you, Mr. Chair.

Dr. Davidson, let's go over your CV and see just exactly what you've done to get your reputation here in Texas as the leading expert on these issues. You since the '90s have joined with Professor Bernard Grofman with the University of California to do a multi-year study on the Voting Rights Act of 1965, have you not?

MR. DAVIDSON: Yes, sir.

SEN. SHAPLEIGH: And how many people were involved in that, political scientists,
historians, sociologists, voting rights lawyers, others?

MR. DAVIDSON: About 30 people, yes, sir.

SEN. SHAPLEIGH: And what was the result of that multi-year study? Did you write a book? Did you put out a paper?

MR. DAVIDSON: We wrote a book entitled Quiet Revolution in the South, published by Princeton University Press. And in 1994, it had funding from the National Science Foundation and the Rockefeller Foundation. And it was designed to measure the impact of the Voting Rights Act of 1965 on the states that were covered by it -- no, the southern states, the states that are covered by Section 5 of the Voting Rights Act.

SEN. SHAPLEIGH: Now, has this work been cited in Supreme Court opinions, United States Supreme Court opinions?

MR. DAVIDSON: Senator, I can't remember. A number of pieces of my research have, but I'm not sure that that one has. It was entered in its entirety into the congressional record in 2006 when the question of reauthorizing the nonpermanent features of the Voting Rights Act were under
discussion and when those features were coming up for renewal.

SEN. SHAPLEIGH: Were you asked to serve on and did you serve on the National Commission on the Voting Rights Act?

MR. DAVIDSON: Yes, sir.

SEN. SHAPLEIGH: And what was the result of that work?

MR. DAVIDSON: The Commission held ten hearings around the state -- around the country, various parts of the nation to hear people testify as to problems of voting that they encountered. And on the basis of those hearings and other research, I was tasked with drafting the report that the Commission ultimately published entitled Protecting Minority Voters.

SEN. SHAPLEIGH: Now, we've heard from a bunch of folks from Indiana, a bunch from Georgia. Is it safe to say you're the leading expert in Texas on the Voting Rights Act?

MR. DAVIDSON: I am one expert, yes.

SEN. SHAPLEIGH: Let me ask you this: You've recited in your paper, you've recited in your testimony here the long and sad and dark history of voter suppression in the State of Texas. Do you have
any doubt having looked at what is going on here today that this bill is in line with that long, dark history as an act of voter suppression?

MR. DAVIDSON: Senator, it looks to me as though it does fall within that historical framework.

SEN. SHAPLEIGH: Let me ask you this: When we look at this bill and based on your Texas studies, as this bill will be enforced, we've looked at the fiscal note, this is going to be enforced by poll workers all across the vast diverse state, 24 million people from the border to the Panhandle, is there serious potential for discriminatory enforcement of the ID requirements that are contained in this bill at the polls?

MR. DAVIDSON: Yes, sir, I think there are. One of the things that came through in the hearings which the National Commission on the Voting Rights held across the country and especially in areas with significant Hispanic populations was that there is still a great deal of difficulty that Hispanics encounter voting.

When they get to the polls -- there was a study that was presented by a former member of the Justice Department and a special -- and another who is
a specialist in voting at the University of Arizona which looked into the question of how well the Voting Rights Act law regarding language minorities was being conducted at the polling places. And it was found that a significant percentage of Latinos in many of these areas experienced difficulties, and that the actual laws governing language for Latinos and some of the other ethnic minorities were not being enforced.

SEN. SHAPLEIGH: Let me ask you this: You are from Texas. Is that correct?

MR. DAVIDSON: Yes, sir.

SEN. SHAPLEIGH: As a matter of fact, you've spent a lot of time right in these border counties that Sen. Watson has been talking about. Is that true?

MR. DAVIDSON: That's correct. I was born on a cattle ranch between Alpine and Fort Davis, Texas.

SEN. SHAPLEIGH: So you do know what a colonia is?

MR. DAVIDSON: I do indeed.

SEN. SHAPLEIGH: Let me ask you this: Let's talk about the Hispanics in the State of Texas. I represent a community that is 77 percent Hispanic. 55 percent make less than $35,000 a year. I just
looked that up in the 2000 census numbers. 73 percent speak Spanish as a primary language. So you've got -- in addition to the income issues that we see in some of these other cases, you've got the language barrier issues that are not common in Georgia, not common in Indiana. Based on your studies, what potential exists under this bill for discriminatory enforcement of ID requirements at the polls given that language barrier?

MR. DAVIDSON: I think there's a significant possibility of problems there, and that goes back to what I mentioned just a minute ago with regard to the finding of how Latinos are treated at polling places.

SEN. SHAPLEIGH: Let me ask this question: Many here on this floor have made the allegation and believe that noncitizen Hispanics are voting in large numbers in the State of Texas. We've heard from the Attorney General that there is an epidemic of voter fraud, many quotes in different publications about illegal aliens coming and voting in the State of Texas. Based on your studies and what you know, is there any evidence whatsoever that noncitizen Hispanics are voting in large numbers illegally in this state?

MR. DAVIDSON: Well, first of all,
Senator, I have not directly addressed that question in any of my studies. So I can't -- I really can't provide an answer based on that. But I will say that it seems to me that given the $1.4 million that General Abbott spent trying to -- trying to uncover voter fraud and the fact that over a three-year period he has essentially not done so, and to my knowledge, this is the largest effort by the State of Texas in modern history, perhaps ever, to uncover voter fraud, it strikes me as not very plausible that there is much voting going on among illegals in the state, although there's a significant number of them, perhaps as many as 2 million according to the anti-immigration group FAIR.

SEN. SHAPLEIGH: Let me ask you this:

There has been much made about a free ID being offered in connection with the administration of this act. What, in your opinion, are the hidden costs of getting such a free ID?

MR. DAVIDSON: Well, several people have mentioned some of the hurdles and, of course, one of them is just the difficulty that people who don't have automobiles and are poor have in getting a driver's license, the of lack accessibility of DPS and things of that sort.
SEN. SHAPLEIGH: When one goes to get one of the other documents that are permitted under this bill, a birth certificate, for example, is there a cost attached to getting that to produce that for the free ID?

MR. DAVIDSON: What was the example that you gave, sir?

SEN. SHAPLEIGH: Birth certificate.

MR. DAVIDSON: Yes, that — that can be rather expensive. And, in fact, some of the — some of the studies that were done in the Indiana case where the ID was — the government issued ID was all supposed to be free indicated that people often had to spend a good deal of money and a good deal of time getting birth certificates and/or material that indicated that they were born in the United States.

SEN. SHAPLEIGH: In my district, I believe the charge is $22 for a birth certificate to get one in order to go get the free ID. Would that, in your opinion, be a barrier to folks trying to achieve a constitutional right to vote?

MR. DAVIDSON: When the 24th Amendment outlawed the poll tax in Texas in the middle 1960s, the tax, as I recollect, was $1.50, and in some counties there was a 25 percent surcharge, so that
would bring it to $1.75. And in today's dollars, that
would be somewhere around $11. So the figure that you
have quoted is almost twice as high as the poll tax
laws in current buying power when it was abolished.

SEN. SHAPLEIGH: Thank you, sir. Thank you for coming.

MR. DAVIDSON: Thank you.

SEN. DUNCAN: The Chair recognizes Sen. Williams.

SEN. WILLIAMS: Thank you, Mr. President.

Mr. -- Dr. Davidson. Correct? I want to be sure. Is that --

MR. DAVIDSON: Yeah.

SEN. WILLIAMS: Do I have your name right? Okay. Thank you.

A couple of questions. As I read your written testimony, you say some things here that really call up some unfortunate parts of our history here in Texas with relation to racial issues and voting. And I think the one that strikes me the most is the poll tax. And you say that the poll tax is -- was one of the most disenfranchising mechanisms of its day. Tell me how you think this bill, Senate Bill 362, help me understand how you believe that this
imposes a poll tax on voters.

MR. DAVIDSON: Well, as I explained to the other Senator just a minute ago, it is sometimes expensive to get various forms of photo ID that are required to vote.

SEN. WILLIAMS: Well, have you read our Senate Bill 362? Have you reviewed the bill?

MR. DAVIDSON: Yes. I reviewed it briefly, yes.

SEN. WILLIAMS: Well, did you read the whole bill?

MR. DAVIDSON: Yes.

SEN. WILLIAMS: You did? And did you note in the bill that you don't need a photo ID to vote? You can also bring alternate forms --

MR. DAVIDSON: Yes.

SEN. WILLIAMS: -- of information, like a utility bill and a government check or a social security document, or it could be a Medicare enrollment card, those kinds of things that might be very common for people, especially the kinds of folks that you're talking about, to have? And you still think this imposes a poll tax even in light of the alternate forms? All you talked about and all you referenced in the paper here is the cost of a photo
ID. But isn't it true, in fact, that there are alternate forms of identification that are available that would be available to most people at no cost?

MR. DAVIDSON: In that case, if it's not a photo ID that's shown at the polls, isn't one required to cast a provisional ballot?

SEN. WILLIAMS: No.

MR. DAVIDSON: No?

SEN. WILLIAMS: No, if you bring two alternate forms of identification -- and there's a list in the bill. I'd be glad to read them to you if you'd like for me to do that.

MR. DAVIDSON: Could you do that, please?

SEN. WILLIAMS: Yes, yes, give me just a second to get that in front of me. Okay. "the following documentation is acceptable as proof of identification under this chapter. Any two of these items would be sufficient: A copy of a current utility bill; a bank statement; a government check, a paycheck or other government document that shows the name and address of the voter; official mail addressed to the voter -- addressed to the person by name from a governmental entity; a certified copy of a birth certificate or other document confirming birth that is
admissible in a court of law and establishes the person's identity; United States citizenship papers; an original or certified copy of a marriage license or a divorce decree; court records of the person's adoption, name change or sex change; an identification card issued to the person by a governmental entity of this state or the United States for the purpose of obtaining public benefits, including veterans' benefits, Medicaid or Medicare; a temporary driving permit issued to the person by the Department of Public Safety; a pilot's license; a library card that contains the person's name issued to the person by a public library located in this state; or a hunting and fishing license issued by the Parks & Wildlife Department.

Now, really, Dr. Davidson, do you think it's so burdensome that if we're going to allow someone to bring a copy of a government-issued document of any type plus a library card or anything issued by a government entity like that, I mean, that's a pretty long list, is that really that burdensome? All the things that you talked about, how do you call this a poll tax if we're giving these alternate forms of ID?

MR. DAVIDSON: I think for some people
it will be difficult to get those kinds of things.

SEN. WILLIAMS: But is it a poll tax?

That's my question.

MR. DAVIDSON: Well, it's not officially a poll tax.

SEN. WILLIAMS: No, it wouldn't be a poll tax.

MR. DAVIDSON: It would be a burden of time or in some cases money, yes.

SEN. WILLIAMS: Yes. And didn't the Supreme Court speak to that very point in their opinion in the Crawford case? Are you familiar with that?

MR. DAVIDSON: Yes.

(Simultaneous discussion)

SEN. WILLIAMS: Okay. And I believe that what the Supreme Court said that burdens of that sort arising from life's vagaries, however, are neither so serious nor frequent to raise any question about the constitutionality. The availability of the right to cast a provisional ballot provides an adequate remedy to the problems of that character.

So in addition to the long list of alternative documents that we would allow under the provisions of Senate Bill 362, we also have the
provisional ballot provisions that are referenced here, and we don't require them to come back like the other states do.

Now, I just fail to see -- I think it's very inflammatory for you to come before this body and talk about the legislature imposing a poll tax when the bill doesn't provide for that at all, and, in fact, recognizes that the very things that Sen. Shapleigh has been talking about over here, the burden of having to come up with some of these documents might be too much, and we provided these alternate forms. I just don't think that's fair at all.

MR. DAVIDSON: Well, we disagree on that, and four members of the Supreme Court apparently disagreed, too, with regard to the issue --

SEN. WILLIAMS: Now --

MR. DAVIDSON: -- that it was not a poll tax.

SEN. WILLIAMS: I believe that you referenced also in your remarks earlier the Attorney General and the record that he had in his failure to find any voter fraud after expending a vast sum of money, I believe you said $1.9. I think it's actually $1.4 million that the Special Investigations Unit
spent. Did you speak of that earlier? Did I --

MR. DAVIDSON: I believe I did, yes.

$1.4 million, yes.

SEN. WILLIAMS: Right. Okay. Maybe I

misunderstood you, but it was, in fact, $1.4 million

that was erroneously reported in a newspaper that the

funds were spent on election fraud and enforcement.

In '03 the Office of the Attorney General launched a

Special Investigations Unit. Initially it was funded

by a Justice Department grant that's administered by

the Governor's Office. Contrary to the reports that

you seem to have bought into without any real digging

into the facts is that the SIU, the Special

Investigations Unit, it handles many types of cases,

not just election fraud.

Here are some of the cases that they

were involved in: The El Dorado YFZ Ranch, we had

three Special Investigation Unit investigators that

are currently assigned there full time to that case;

the Texas Youth Commission, including a case where a

TYC officer was indicted for drug possession, they

handled more than 840 abuse allegations; hurricane

related rapid response efforts, including serving

subpoenas on potential price gougers; market

manipulation and penny stock fraud case that was
jointly pursued with the Securities and Exchange Commission; an ERCOT case; the Cyber Crimes Unit and Fugitive Unit assistance for combined arrests of over 100 cyber predators and child pornographers and more than 1,000 fugitives; identity theft; public corruption, including a Bastrop County case and the Potter County Sheriff's case; money laundering, including investigations into the bulk transportation of drug currency, money couriers and money services businesses; and then finally election fraud.

Now, I don't think it's fair for you to come before this body and characterize that $1.4 million as an investigation into election fraud when, in fact, some of the most horrific things that have happened in this state that the AG has had to get involved in, that's what they've been spending that money on.

MR. DAVIDSON: "Vote fraud has been an epidemic in Texas for years, but it hasn't been treated like one, Abbott said, in announcing the SIU. It's time for that to change. He promised that his newly created Special Investigations Unit would help the Police Departments, Sheriff's Offices and District and County Attorneys successfully identify, investigate and prosecute various types of voter fraud
offenses. Established with a $1.4 million grant from the Governor's Office, the SIU would have as one of its prime responsibilities investigating voter fraud allegations, he said. Abbott targeted 44 counties containing 78 percent of registered voters in the state. According to the Austin American Statesman, complaints originate from voting officials, District Attorneys or citizens and are sent to the Secretary of State or the Attorney General. Each complaint is evaluated by a professional employee to determine whether the complaint is legitimate and warrants further investigation."

Now, that sounds to me like the Attorney General was certainly representing this as a major effort to uncover voter fraud.

SEN. WILLIAMS: So whatever you read in the paper, that's what you pretty much take at its face value?

MR. DAVIDSON: Most of what I quoted, Senator, is taken from the Attorney General's Website when he was announcing this voter fraud initiative.

SEN. WILLIAMS: Dr. Davidson, for the record, to date the Office of the Attorney General has resolved 22 election fraud prosecutions at a cost of approximately $600,000. There are an additional eight
election fraud indictments that are pending currently. There has been approximately $100,000 spent on those eight cases. And of the 700,000 -- of $700,000 spent on election code investigations, about $93,000 of that came from Department of Justice grants. DOJ grants aren't used to fund these Special Investigations Units any longer, and it's now funded with general revenue from the state.

So I just felt like when you come before this body and you make allegations about a poll tax being levied on voters and you haven't even read the bill to know what the alternative voting provisions are, and you then come and accuse our Attorney General of doing something with that Special Investigations Unit without even really looking into what the unit had really cost, I just felt like the record needed to be set straight.

Thank you very much. I appreciate you being here so late at night.

MR. DAVIDSON: Thank you, sir.

SEN. CARONA: Sen. Van de Putte, for what purpose?

SEN. VAN de PUTTE: I would like to hold, Mr. President, until -- Sen. Shapleigh, I think, would like to continue on this, and then I have a