separate set of questions for the professor.

SEN. CARONA: Okay. Sen. Ellis, for what purpose do you wish to be recognized?

SEN. ELLIS: On this point to just ask a couple of questions.

SEN. CARONA: Certainly.

SEN. ELLIS: Dr. Chandler, thank you for being here at this late hour. I know you've been here all day. I think you mentioned the year the poll tax was enacted in Texas. I think you said it was 1901.

MR. CHANDLER: Yes, sir.

SEN. ELLIS: And then it was abolished by the courts in 1966, so from about --

MR. CHANDLER: It was the 24th Amendment.

SEN. ELLIS: Yeah. So I guess the 24th Amendment abolished it, but I think it took us a little longer to --

MR. CHANDLER: It was actually the result -- I mean, once that had been abolished, there was a court case that was heard --

SEN. ELLIS: Yeah.

MR. CHANDLER: -- in Texas I think right after the Voting Rights Act was passed, yeah.

SEN. ELLIS: So I assume the Attorney
General in Texas at the time or the Members of this body didn't see fit to come in and abolish it right away?

MR. CHANDLER: That's correct.

SEN. ELLIS: It was a long and tortious road to get there. So about 62 years we had a poll tax in Texas.

Now, I assume you're guessing, but I just want your opinion on, do you think anybody on this floor has pulled up the legislation and read the poll tax bill in Texas? Just a guess.

MR. CHANDLER: I doubt it. I don't know.

SEN. ELLIS: Okay. Just as someone was asking you whether or not you read every word in this bill, I happen to agree with you, this bill is nothing more than a modern day poll tax. And if it hurts somebody's feelings because it's referred to as that, well, let their feelings fall where they may.

You're a student of history, a great and respected student of government and history. I assume when Members sat in these chairs on this floor at these desks in 1901, 1902 or maybe 1899 in a session, maybe a special session -- I don't know if they had to suspend the rules to do it by 16 votes or if they
could get their 21 or 31 pretty darn easily. Do you have any sense -- could you give us some sense of what you think the discussion was like, or do you think anybody got up in one of these -- behind one of these desks and said "Maybe if we have a poll tax it will have a disproportionate impact on certain groups of people"?

MR. CHANDLER: I think that was certainly well understood whether it was said on the floor or not.

SEN. ELLIS: If you were guessing, what kind of people probably would not have had a sex change or have two forms of government -- two letters that they can bring in, maybe they wouldn't have a light bill or maybe they wouldn't have a library card because they're not reading books, would you assume that most of those people are probably low income?

MR. CHANDLER: Yes, sir.

SEN. ELLIS: Most of them are probably African-American or Hispanic?

MR. CHANDLER: Yes, sir.

SEN. ELLIS: Would you assume that most of them would probably vote in the Democratic Party for whatever reason?

MR. CHANDLER: Now, we're talking about
1901?

SEN. ELLIS: No, no, we're talking about this bill.

MR. CHANDLER: Oh, now, yes. I'm sorry.

SEN. ELLIS: I'm sorry. Yes, under this bill.

MR. CHANDLER: Yes.

SEN. ELLIS: Yeah, I know my colleague went through a long litany of things. And as I listened to him, I was thinking maybe some of our colleagues on this floor don't run into people who fall into those categories because they don't get invited to dinner parties, or maybe they don't show up at the legislature. Maybe they don't have the ID to get a Southwest Airlines flight to get here. Maybe they don't like getting searched or going into the back room. Maybe they don't have the money to get a ticket on Southwest Airlines.

So my question was, do you think most of those people who would fall under that laundry list of people who wouldn't have those forms of identification would probably be African-American or Hispanic?

MR. CHANDLER: Yes, sir.

SEN. ELLIS: So there is a corollary between the people who would not meet the requirements
laid out in this bill and the people who would not comply with the requirement to pay a dollar or dollar and a half to pay a poll tax?

MR. CHANDLER: Yes, sir.

SEN. ELLIS: Okay. I think it's a perfect analogy, and I appreciate you being here.

MR. CHANDLER: Thank you.

SEN. CARONA: Senator Shapleigh, do you wish to be recognized?

SEN. SHAPLEIGH: I do, Mr. Chair.

SEN. CARONA: You're recognized.

SEN. SHAPLEIGH: Dr. Davidson, you were questioned about representations by the Attorney General, and I think you accurately had actually read his press release. Do you recall that he sent out a press release in connection with his investigation launch that he intended to do in March of 2006?

MR. CHANDLER: Yes, sir. In fact I went back and just tread it a couple of days ago. It's on his Website.

SEN. SHAPLEIGH: And do you recall him in that press release saying "In Texas an epidemic of voter fraud is harming the electoral process"?

MR. CHANDLER: Yes, sir.

SEN. SHAPLEIGH: And it's in his own
press release where he announces he's going to
dedicate a $1.5 million grant from the Governor's
Office. That's where that number came from. Correct?

MR. CHANDLER: That's correct. Not out
of the newspaper, but from him.

SEN. SHAPLEIGH: Mr. Chair, if I may,
I'd like to make this a part of the record as
Exhibit 30, which is the Attorney General's press
release titled Helping Stamp Out Voter Fraud in Texas
from March of 2006.

(Exhibit No. 30 marked and admitted)

SEN. CARONA: Senator Shapleigh, if
you'd bring it forward, please? Have you concluded
your remarks?

SEN. SHAPLEIGH: Yes, sir.

SEN. CARONA: The Chair recognizes
Sen. Van de Putte.

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

Professor, thank you for being here. I
know that it has been a long day and now I guess
beginning a couple hours into the second day. You are
probably one of the best national scholars on historic
suppression and disenfranchisement of certain classes
of voters. Is that correct?
MR. CHANDLER: Yes, ma'am.

SEN. VAN de PUTTE: And because of that you are now -- you are considered Professor Emeritus at Rice, one of our prestigious universities here in Texas and one that is nationally and internationally renowned. And is that right, you are --

MR. CHANDLER: Yes, ma'am.

SEN. VAN de PUTTE: -- Emeritus? With the work that you have done, much of what had been documented in other states was a poll tax. I would like for you to comment on literacy tests and how they were used. And I think one reason why that is so important is because for the first time the State of Texas was called into that Section 5 on Hispanics and language barriers because not just of the poll tax, but because of the literacy test.

And I'm going to explain what happened to my own very mother, and if you could elaborate in your research if this was something that occurred rarely or something that occurred pretty often. My mother in 1952 was going to cast her first vote in a presidential ballot. My mother, a college sophomore at the time, went to the polls with her poll tax to cast that ballot.

Now, in San Antonio, what they used to
do with people who had Spanish names is they put them in a room until enough people got there, and then somebody would go administer a reading test. And for my mother she was one of about ten or twelve she said, and she waited and then she got administered a reading test. Now, she was in a group of she said ten or twelve, she didn't remember, and being a college sophomore she thought she probably had a pretty good chance of passing that reading test. But because she had the audacity to be in a group with someone who supposedly failed, none of those people were allowed to vote, none of them. That's how they disenfranchised my mother and people with Spanish surnames.

And so when I took my mom to the Democratic National Convention in August of last year, she cried every day because she was at a convention, and the first time she tried to cast a ballot she was discriminated against because her maiden name was Aguilar, and her name was Maria Isabella Aguilar.

Knowing now what you know about my family, and some of my colleagues just can't seem to understand why we just can't get over it, that happened a long time ago, and they keep questioning "Why do we have to go to the Justice Department? Why
do we have to do this?" Well, that's what happened to my family, and yet we know there are records not only of poll tax, but we have pretty good accounts of what occurred in South Texas communities as well.

Given the fact that that's just personal family history and that you have studied this, how prevalent was that discrimination and those tools, not just the poll tax, but reading tests and literacy tests and not just owning property, but how was that used and how is that different from just one more barrier, one more hoop to jump for someone to cast a ballot as proposed in this bill today?

MR. CHANDLER: Well, it's certainly true that Latinos in Texas have been severely discriminated against. The White Primary, the Democratic Party, in most places allowed Latinos as distinct from blacks from voting, but they were local White Primaries along the border that were set up by individual counties. And so they suffered much of the same discrimination in that regard that blacks did.

The State of Texas officially did not have a literacy test like some of the other southern states did, but at the same time there is much anecdotal evidence of the kind that you have just described about Hispanics being treated differently
and being required essentially to pass an informal literacy test.

And continuing up into the current time, there are efforts that have been documented to put the fear of God into Latinos going to vote, such things as people standing outside the polling place and taking a video -- videos of them and of their license plates. There have been incidents of people dressing up in official looking outfits, police-appearing uniforms and informing Latinos who come up to the polls that they better look out. If they are not legal, they may be in big trouble. And some of my historian colleagues and I at Rice a few year ago uncovered a number of those instances in Texas and throughout the southwest with regard to Latinos.

So this is not -- what your mother experienced, well, it is not ancient history that Latinos are still being discriminated against at polling places in the southwest, including the State of Texas.

SEN. VAN de PUTTE: Professor, I know that you've done a lot of work in this, and certainly the books that you've used and much of the case law and much of the folks that studied this have said that you are pretty much the expert on this. And although
reading our bill I'm still a little bit confused
because as I read it, everybody is going to have to
have at least that voting -- the certificate that's
issued by the elections administrator of that
jurisdiction and a photo identification. But I worry
that if you don't have that with you and with no money
put in to the fiscal note to do any education,
training of poll workers, when in your work, in your
research, is there any effect when those officials who
are supposed to be administering the election, the
election clerks and judges, is there any evidence to
show us when there is not sufficient training of
those?

And particularly with the litany of
documents that could be possibly used, is that --
should that give us pause with no training about how
this is going to be enacted and what's going to happen
basically at the grassroots level? Does this have the
potential to cause further disenfranchisement of
Hispanics, blacks and those people in poverty, given
the fact that we have zero dollars in that fiscal note
for the training?

MR. CHANDLER: That would certainly be
my supposition, Senator.

SEN. VAN de PUTTE: Thank you,
Professor. I appreciate you being here till two in the morning.

MR. CHANDLER: Thank you.

SEN. CARONA: Members, is there anyone else with a question for the professor?

SEN. LUCIO: Mr. President?

SEN. CORONA: It appears not.

SEN. LUCIO: Mr. President?

SEN. CORONA: Senator, for what purpose?

SEN. LUCIO: Just to ask a question or two. I might not have another chance to do this with this professor. I'd like to ask a question.

SEN. CARONA: You're recognized.

SEN. LUCIO: Thank you, Mr. President.

And very briefly, Professor, thank you. I join my colleagues in welcoming you here and commending you for all your studies over the years.

MR. CHANDLER: Thank you.

SEN. LUCIO: Leticia Van de Putte, Senator Van de Putte, reflected on literacy tests. My father worked at the Sheriff's Office for 30 years in Cameron under about four different Sheriffs and, of course, he took me to a lot of political parties in the old days when I was just a kid, and I heard many stores obviously along the way.
And I want to ask you, in your studies -- you also included some of these studies, and one was when the poll tax was in effect, I'm told that the politicos, those obviously in power, would buy all the poll taxes that people needed as long as obviously they had control over those votes.

MR. CHANDLER: Yes, there were machines along -- along the border, yes.

SEN. LUCIO: Exactly. Now, that being the case and putting it -- comparing that to today's standards in terms of illegal activities during the election -- during the elections that took place then, buying or purchasing the poll tax for somebody and then driving them to the polls and then making sure they voted a certain way, what kind of -- what kind of -- let's say the Attorney General -- what kind of prosecution would those individuals be -- you know, be in effect -- be affected by under the laws of today? How could they be prosecuted? I mean, in today's -- with today's laws, how would those people back then be prosecuted? Could they be prosecuted?

MR. CHANDLER: You mean the bosses who would buy poll taxes?

SEN. LUCIO: What would they be subject to in terms of today's laws and being prosecuted for
those kinds of political activities? Is what I'm trying --

MR. CHANDLER: Well, they -- I mean, it would certainly be illegal, and they would be -- if the law were carried out like it was supposed to be, they would certainly be prosecuted if their behavior came to light.

SEN. LUCIO: And the point I wanted to make is simply this: That that, in fact, took place.

MR. CHANDLER: Yes.

SEN. LUCIO: And that was part of the suppression. That was part of what Hispanics or Latinos or Mexican-American citizens on the north side of the border, Texas-Mexico border went through, and maybe some of the Members here on this floor are not -- are not aware of, and I wanted to share that because that was just rampant. That was just part of any politics at the time in the 19 what, '40s, '50s?

MR. CHANDLER: Into the '50s certainly. The old machines were the Patrones, and it was almost a feudal relation. And the Latinos were looked upon as inferior, as foreign in some sense, as people to be manipulated and used for the purposes of the -- of the Patrones, and that's -- that is undeniable Texas history.
SEN. LUCIO: I lived those days as a young boy. I remember them, and I think that's what Sen. Van de Putte was pointing out as to bad memories of past. Thank you.

MR. CHANDLER: Yes. Thank you.

SEN. DUNCAN: There are no more -- no more questions in the queue. So you are free to -- or excused. Thank you for your testimony.

MR. CHANDLER: Thank you, sir.

TESTIMONY BY ED JOHNSON

SEN. DUNCAN: The Chair calls Ed Johnson. Okay. Mr. Johnson, I think you have some documents you'd like to introduce into the record. We'll mark those as Exhibit No. 31, and they'll be in the record.

(Exhibit No. 31 marked and admitted)

SEN. DUNCAN: Identify -- let me identify these as it looks like records that are from specific voting documents. So at some time in your testimony I assume you'll explain these. Exhibit 27 or -- 32? I'm sorry. Exhibit 32 will be received in the record.

(Exhibit No. 32 and 33 marked and admitted)

SEN. DUNCAN: You have ten minutes.
State your name and who you represent.

MR. JOHNSON: Okay. Good morning. My name is Ed Johnson. I'm with the Harris County Tax Office, and in Harris County the Tax Office does voter registration. I have worked for the voter registration department for eight years now at the Harris County Tax Office. I was asked to come and present to you-all today some cases of voter rarity or voter registration fraud that we have presented to the House in previous testimony. We have a sampling of it to show you here today. I was asked by the new Tax Assessor/Collector of Harris County, Leo Vasquez, who was just appointed this last December the 23rd. So he's only been in a couple of months, and he asked me to give the, I guess, testimony today.

One of the things that Leo is real proud of and really works on hard on our voter registration staff is -- his goal for us is to have every citizen that is eligible to vote registered. That is his goal, and we are making all kinds of strides to make that possible in voter registration. On the same note, he also doesn't want any of these real, valid voter registrations to be disenfranchised by someone taking their vote. So the integrity of the voter roll is also very important to us.
The first case that I was going to lay out is a case of voter fraud. It was committed by a volunteer deputy, Janice Shelvin. Janice Shelvin was a college student that became a volunteer deputy in one of her college classes. And according to her testimony, her professor asked her to do a voter registration drive as part of her, I guess, class for credit or some course. Ms. Shelvin unfortunately procrastinated in her testimony and waited to the last day and realized that she had to turn in quite a few applications.

She then stated that she pulled out her phone book and started filling in voter registration cards. After 25 names she ran out of names in her phone book and then proceeded on with the other 36, making up names and filling them in. She turned this in. I think several of her classmates were all gathered into one bundle and were delivered to the Harris County Tax Office to be registered.

It was the, I guess, observance or diligence of one of our very good clerks as they were processing these applications actually started to note that these applications all had very similar handwriting and were all used by the same pen. So there was a red flag waived in her head that there's
something amiss here and brought it to the attention
of her supervisor, where we then challenged these
applications because they did appear to be all signed
by the same person and written all in the same
penmanship. So there were 61 cases.

We, under the I guess Texas Election
Code, sent these voters a letter challenging these
applications thinking they were fraudulent. We got 25
replies from voters, and then the other 36 were -- no
reply was found. In fact, the post office were sent
certified mail as part of the documentation that
you-all received, and the post office said that there
was no residence there to deliver it to. So they were
returned. So I think that those were the fraudulent
ones.

This was sent to the Harris County
District Court, and Ms. Shelvin, I guess, pleaded
guilty to this offense and was convicted for 61 cases
of voter fraud. If -- and this was back in the year
2000. At that point in time as in the election code,
voter registration cards are accepted on face value.
When the voter signs the bottom, or the alleged voter,
when the alleged voter signs the cards, they are
accepted on face value until they are challenged. So
that's what happened to these.
And if they were not caught by our clerk that had the real judgment here, these people would have become registered voters. We would have sent them voter registration cards with the possibility of someone collecting those cards and possibly voting them in an early voting scenario or something like that.

The second case I would like to present is -- we refer to it as the Dashwood case. This happened in 2006. We received 121 voter registration applications. The resident address that they -- these vultures were trying to use was a street called Dashwood. There is a street in Houston called Dashwood, but the address range that they were writing on the voter registration card was nonexistent. There isn't that address block on Dashwood.

And in our office, the procedures are when our processors can't find it in the database, the street database, a street range, they send it to our mapping department who has all the plots and the plats and all the new maps and everything, and they start researching to find it. They found out that this address of Dashwood is nonexistent and then really quickly realized "Oh, boy, I have a whole bunch of applications here all in this block range of
Dashwood." And so we started looking at them and found that, once again, they were similar penmanship, the wide variations of the name, they switched the first name, last name, they would turn the dates of the birth date around. They had them all just jumbled up trying to register a whole bunch of different people that were fraudulent at this address on Dashwood.

Thank goodness they didn't know Houston that well to know that that was a nonexistent address, or we never would have caught these for that. But the only other characteristic they had was all these applications were actually mailed from El Paso to us. So whoever was doing it was mailing them from El Paso here. And those were turned over to our D.A., and they are still under investigation. I think they took it to the D.A. in El Paso where they did have some people that were questioned. I don't know what the final outcome of that one was.

Then the last case I'd like to present is we have 24 examples here of deceased -- people that are deceased, and they voted after their date of death. These are 24 examples that, once again, we had a diligent clerk as we were going through and cleaning up our voter roll, taking the social security death
list and matching it to voters to send notices, that she started to realize that some of these people had voting history after their date of death on the social security list. And some of these 24 people voted numerous times here.

I can tell you that these were registered voters in Harris County, and they are now deceased, and they do have a voting history. Our County Clerk keeps our voting history records, and the County Clerk has voting history for these people in elections that were past their date of death.

In this documentation, you will see that we have a complete voter file for each one of these voters. It's their voter registration application, how they get registered, if they had any changes of address. It will have a front cover page that has the computer screen shot of that voter's record in our office, and then also on the bottom corner it will show what elections they voted in and the date of those elections. And then on the last page is a notice from the social security department of their date of death, and you can go through these, and you-all can get the documents and look at them.

Several of these voters voted early in person during early election. We had a couple of them
on election day and a couple by ballot by mail. The
majority of them were done early in person in early
voting.

And I know it's getting late, and so
I'll stop with this fine set of documents.

QUESTIONS FROM SENATE FLOOR

SEN. DUNCAN: The Chair recognizes
Sen. Huffman.

SEN. HUFFMAN: Mr. Johnson, thanks for
staying with us so late.

MR. JOHNSON: You bet.

SEN. HUFFMAN: I appreciate it. I want
you to go over again that last group that you were
talking about to make sure that it's clear. I'm not
sure that it was. As I understood your testimony,
you've established that, in fact, that last group
of 24, at least some of those people, or someone,
actually cast a ballot in Harris County after it was
determined that they were dead. Is that correct?

MR. JOHNSON: That is correct.

SEN. HUFFMAN: Okay. And what are the
numbers? How many of those were you able to
establish?

MR. JOHNSON: Well, we have proof here
that 24 -- and this is just a random, you know,
sampling that we found -- 24 of these people are
deceased, were registered voters in Harris County they
are deceased now, and they had voting history after
their date of death on the social security list.

SEN. HUFFMAN: And how was it that you
came to investigate that particular group of people?

MR. JOHNSON: This is something that we
routinely do. Almost on a daily basis now in our
office we get probate court records and go through
them to find if any of those people were registered
voters to remove them from the voter roll. Right now
what we're working on is we get notes in poll books,
family members will write notes in poll books, you
know, this was my husband or wife and is deceased, and
we go through these, we mail these people letters
asking them to confirm this information.

And this particular project we actually
purchased a copy of the social security death database
and started comparing our voter roll to it to see if
we had any matches to clean our voter roll up.

SEN. HUFFMAN: Is that a procedure
that's required by the Secretary of State, or is that
something that Harris County has taken on?

MR. JOHNSON: That's something that
Harris County took on as an attempt to, like I said,
make a clean and accurate voter roll. It actually
cost our department quite a bit of money to make that
purchase and to do that work.

SEN. HUFFMAN: And is that a cost that
Harris County has taken on itself?

MR. JOHNSON: Yes.

SEN. HUFFMAN: Do you have knowledge as
to whether or not there are other counties in the
state that are taking this additional obligation on?

MR. JOHNSON: Yes, in fact -- yes, there
are other counties that take this on. In fact this
particular run here, we did this in partnership with
Tarrant County at the time.

SEN. HUFFMAN: Okay. Do you know
whether or not all the other counties in the State of
Texas are participating in this?

MR. JOHNSON: No, I do not know if all
the other counties in the State of Texas are.

SEN. HUFFMAN: Okay. Do you believe
that there could be some counties that are not purging
their rolls of deceased individuals?

MR. JOHNSON: I would believe that
that's very possible.

SEN. HUFFMAN: Okay. I want to go
through something with you because I think you've
established through some of the cases that you've brought to us and the investigations that have been done that there are, in fact, people being registered in Harris County who -- in some fraudulent manner. But let's take an example, and I'm going to ask you about a situation where an individual would fill out the -- a Texas Voter Registration Application. This is just a form that is provided by the Secretary of State. Is that correct?

MR. JOHNSON: Yes.

SEN. HUFFMAN: And do you have one of those forms in front of you?

MR. JOHNSON: I have several copies.

Would you like for --

SEN. HUFFMAN: Okay. All right. If you could just make those available? And if anyone who would like to look at this, we'll provide you a copy. And these are the original ones. Actually you brought a stack from Harris County. Is that correct?

SEN. DUNCAN: Senator, do you want to put these in the record?

MR. JOHNSON: These were actually produced by the Secretary of State's Office.

SEN. HUFFMAN: Yes? Yes, sir? Yes, Mr. Chair?
SEN. DUNCAN: Do you want to put that in
the record?

SEN. HUFFMAN: Yes, could we put this in
the record and mark it as an exhibit? I don't know
what number we're on.

SEN. DUNCAN: It will be Exhibit No. 34,
and describe it, if you would.

(Exhibit No. 34 marked)

SEN. HUFFMAN: Yes, it is a Texas Voter
Registration Application. This is one that is
particularly from Harris County, but it's -- I believe
it would be produced by the Secretary of State. Is
that -- is that correct, Mr. Johnson?

MR. JOHNSON: Yeah, these are produced
by the Secretary of State, and they can be used in any
county across the State of Texas.

SEN. HUFFMAN: All right.

SEN. DUNCAN: It will be -- it will be
received in the record.

(Exhibit No 34 admitted)

SEN. HUFFMAN: All right. Thank you,
sir.

Just to see how this process would work,
let's just pretend that -- let's pretend that I'm
Elvis Presley. Okay? And let's say I fill out this...
Texas Voter Registration Application and I mark -- and there's a place at the bottom that provides space to present a Texas driver's license number and a social security number. Is that correct?

MR. JOHNSON: Yeah, that's Step No. 9.

Let me have my glasses -- let me put my glasses on.

SEN. HUFFMAN: All right.

MR. JOHNSON: Or 8 -- that's 8.

SEN. HUFFMAN: That's No. 8.

MR. JOHNSON: Sorry.

SEN. HUFFMAN: And at the bottom of No. 8 is an option "Check if you do not have a Texas driver's license or Texas personal identification number," and then next to it is "Check if you do not have a social security number." So let's say I do not have either one of those, either one, do not have a TDL or an ID card, nor do I have a social security number. So I check both, I sign it and I mail it off.

Where does it go? Does it go to your office?

MR. JOHNSON: Yes.

SEN. HUFFMAN: And then what would happen when it arrived at your office with that information from me asking to register to vote?

MR. JOHNSON: The first thing when one of these applications comes into our office, we check
it for what the date is on it because if you mailed it, it becomes effective 30 days from the date it was postmarked or the date we receive it from a volunteer deputy or some other government agent. We check it for completeness, make sure all the boxes are filled in. If the application is not complete, we'll mail them a letter of incomplete and ask -- with another application in it and ask them to try again and make sure they fill all the required boxes out.

In the scenario you were talking about, if you checked the box that said "I do not have a Texas driver's license" and you checked the box that said "I do not have a social security number," under the Help America Vote Act, the Secretary of State is supposed to provide a unique ID number for this voter, and they do. They provide a state voter ID number, and this person becomes registered.

SEN. HUFFMAN: Okay. So that is happening, and that is the law in the State of Texas at this point. Is that correct?

MR. JOHNSON: Correct.

SEN. HUFFMAN: Okay. Once they provide that unique ID number, then what would happen?

MR. JOHNSON: Well, then we mail them a voter certificate card.
SEN. HUFFMAN: Okay. What form of identification would they then need to vote with that voter registration card?

MR. JOHNSON: In this particular example, you are marked on the poll book. When we print the poll book or the list of registered voters for an election, you would be marked as not being ID compliant because you haven't shown ID to who you are. And in the state law, what it states there is that you can use any one of the currently prescribed IDs with the exception of the voter registration card. I have the list here. You know, you can use your driver's license. Most people do something like that. You can use, you know, birth certificate, citizenship papers, you know, a passport. The one that I find real interesting is you can use a letter, an official letter mailed from a government entity. So if I had mailed them a letter saying that they hadn't had a complete application to try again, that is a letter from a government entity, and they could use it for proof.

SEN. HUFFMAN: So if I had no other form of ID, I could use the letter that you had sent to me as meeting the requirements under 63.0101 described as official mail addressed to the person by name from a
governmental entity. Is that correct?

MR. JOHNSON: That is correct. That is an acceptable form of ID.

SEN. HUFFMAN: Okay. So a person who wanted to commit fraud could, in fact, send in applications -- is that correct -- using false names as long as they had an address where they could receive mail, go through this dance with the Secretary of State and the tax assessors and get voter registration cards along with letters from your office, and they could use those things to get individuals to go in to the poll to vote, and it would be virtually impossible under the current state of the law for them to be detected. Is that correct?

MR. JOHNSON: Correct. The election judge could not deny them the right to vote. They are on the poll book. They are listed as a registered voter. They have shown one of the acceptable forms of ID, and they would be allowed to vote on election day.

SEN. HUFFMAN: Okay. So that's just one way that voter fraud can be committed in the State of Texas under the current law, and no one would know actually that it was going on probably other than the individuals involved with the committing the offense. Is that correct?
MR. JOHNSON: That is correct.

SEN. HUFFMAN: All right. One of the other records that you provided to us was the young woman, I believe, who was registering people for a school project. I think you indicated that she as well managed to successfully register some individuals who you believed were nonexistent individuals. Is that correct?

MR. JOHNSON: No, she was never able to register anybody.

SEN. HUFFMAN: All right.

MR. JOHNSON: We caught them before. Like I said, the clerk that was working these applications noticed this pattern before we mailed any voter registration certificates out, and we were able to stop them and challenge these voters. But we had officially accepted the applications and noticed everything being complete, and they were in the process of being registered.

SEN. HUFFMAN: All right. What is your experience as you find cases that you believe are cases of voter fraud and you bring them to the District Attorney's Office? Has it been your experience that those cases had been difficult to prosecute?
MR. JOHNSON: Yes, we have turned quite a few cases over to the District Attorney, and I will tell you our District Attorney has made attempts to prosecute this, going back to one of our long-time District Attorneys Johnny Holmes. And he basically said that there is not the tools in the election law to prosecute a voter. Basically in order to get voter fraud prosecuted, you have to have that person committing the offense confess to that offense for prosecution.

One of the things they always state was because -- just a signature on the poll book is not really enough evidence for them so far to get a conviction, that if we ever had some other form of ID that they contend it was a harder match, you could actually have successful convictions probably on some of these voter fraud issues.

SEN. HUFFMAN: Isn't it true that the current state of the law does not facilitate proof that a particular person cast a ballot? Is that -- is that a fair statement?

MR. JOHNSON: Yes.

SEN. HUFFMAN: Do you think that the current Public Integrity Division of the Harris County District Attorney's Office is meeting the same
problems that were met, as you mentioned, back in Johnny Holmes' days?

MR. JOHNSON: Correct.

SEN. HUFFMAN: All right.

MR. JOHNSON: There was a recent case that I just saw pending on a Website. We had an open record request for -- right before this last November 2008 election from Texas Watchdog. They sent us a list of over 4,000 voters that they believed to be deceased. This was information that they found from the social security death list. We are currently working that list trying to, you know, find out if they are deceased or not, and several of them we have removed from the rolls.

Texas Watchdog also gave that same list to one of our local news stations, Channel 2 in Houston. Channel 2 did an investigation and actually found two of the voters on that list as being deceased and voting during the Primary, and that was after they had passed away. They actually placed a vote in the Primary, and they had interviews with the family members showing the death certificates and everything. And the family members were really upset about this, that someone would steal or fraud their deceased relative's name.
Watchdog actually turned these over to the District Attorney's Office, these cases, and they were unable to -- the District Attorney had to put a comment back they were unable to get any prosecution on these cases because they didn't have anyone to prosecute nor anyone to confess to the crime.

SEN. HUFFMAN: All right. So each one of these cases is actually pretty much a "Who done it?" Is that correct?

MR. JOHNSON: That is correct.

SEN. HUFFMAN: And just like any other criminal case, the State of Texas has to prove these cases beyond a reasonable doubt. Is that correct?

MR. JOHNSON: I believe that is correct.

SEN. HUFFMAN: So they have to prove identity, they have to prove intent, they have to prove the elements of the offense. And many times they're confronted with a situation where they just don't have any way to prove it. Is that correct?

MR. JOHNSON: That's what I have been told.

SEN. HUFFMAN: All right. Do you think that just because -- you know, we've had a lot of talk today about the fact that there's just -- there's no evidence that there's any kind of voter fraud or voter
impersonation going on because if there -- if it was
happening, then there would be all these convicted
cases out there. Do you think that because it is so
difficult to prove these cases and because the law
does not facilitate the proof, that that may be one of
the reasons why there aren't a lot of convictions that
have been shown through the records? Would you agree
with that?

MR. JOHNSON: Yes. I will say that the
Texas Election Code does not give us the tools to
really do the job that we're, you know, trying to do,
even the D.A.'s Office. It's very difficult to get
prosecution in these cases.

SEN. HUFFMAN: All right. Would it
surprise you to know that this -- well, in the General
Election in November of '04 that the Harris County
District Attorney's Office received 3,324 electric
fraud complaints for that one election, or that for
the Primary Election in March of '08 that they
received 1,502 complaints of election fraud that came
in as -- I would assume slightly -- during the
election and probably for a couple of days thereafter?
Do those numbers surprise you?

MR. JOHNSON: No, they do not.

SEN. HUFFMAN: As the election is taking
place, does your office along with the D.A.'s Office and Beverly Kaufman's Office monitor the situations that are going on, try to field phone calls and receive complaints of election fraud violations?

MR. JOHNSON: Well, I can speak for our office, the tax office. We're actually by election code obligated to review the poll book and all the documents from the election after the election has taken place, to validate that everybody that was marked as voting were registered voters. If we find someone that had been written into the poll book and wasn't a registered voter and allowed to vote, we're, by the Texas Election Code, supposed to turn those names over to the District Attorney, and we do that after every election, and, you know, they do their best in trying to work this. And I know Beverly Kaufman's Office, who runs the election, has the same responsibilities for any voter fraud that goes on. They compile a report after every election and submit it to the D.A.'s Office.

SEN. HUFFMAN: Just a couple of more quick questions, Mr. Johnson. Based on your experience, your years at the Tax Assessor's Office and working on these issues all these years, do you believe -- in your opinion, do you believe that there
is a voter fraud problem in Harris County?

MR. JOHNSON: I will tell you there is voter fraud in Harris County. We have one of the few convicted cases of it. We have examples here. I can't tell you how extensive it is. We have never done a voter fraud study on our voter roll. The cases that I presented to you here today were just found due to workers, clerks in our office being diligent and accidentally stumbling across these records to discover them.

SEN. HUFFMAN: Does current law actually make it difficult to assess the scope of the problem?

MR. JOHNSON: Yes. The current election law is very loose and makes it very difficult to -- doesn't give us the tools to do the types of investigations needed for these projects.

SEN. HUFFMAN: All right. Thank you very much, Mr. Johnson. And thank you, Members, for bearing with me. Thank you, Mr. Chairman.

SEN. DUNCAN: Thank you Senator.

Members, we've been going for over two hours, and we need to give our court reporter an at ease. So we'll be at ease for ten minutes. That will be until 2:35.

(RECESS: 2:25 a.m. to 2:38 a.m.)

SEN. DUNCAN: The Committee of the Whole
will come back to order. Sen. Gallegos, did you want
to yield to Sen. West?

(No response heard)

SEN. DUNCAN: Sen. West?

SEN. WEST: Thank you, Mr. Chairman.

Mr. Johnson --

SEN. DUNCAN: If we could have order,

please. Go ahead, sir.

SEN. WEST: It's Mr. Johnson. Is that
correct?

MR. JOHNSON: Yes.

SEN. WEST: Okay. I'm sorry. Your

position there in Harris is --

MR. JOHNSON: I'm sorry I didn't say

that earlier. I'm the Associate Director of Voter

Registration in Harris County.

SEN. WEST: Okay. Is it true that at

least 13,000 timely voter registration applications

had not been processed when early voting began in

Harris County during the fall of 2008 elections, and

that many of them were not processed before early

voting concluded?

MR. JOHNSON: I do not have those

figures, you know, right off the top of my head. I
could find those answers out for you, but I can't --
SEN. WEST: But let me ask it this way: Was there a substantial number of voter registration applications not processed during that particular time period?

MR. JOHNSON: You know, that's -- you have to define "a substantial number." We received about 120,000 voter registration applications the day -- the day of and day after the cutoff. By the start of early voting, we had probably 95 percent of those worked. And by the time we got to election day, all of them were complete.

SEN. WEST: So you did have a backlog prior to the start of early voting? You only had -- I'm sorry. You had only completed about 95 percent of the voter registration applications at the time that early voting started?

MR. JOHNSON: Correct.

SEN. WEST: Okay. Do you know that Harris County disqualified nearly 70,000 voter registration applications that were received in time for the 2008 election? Do you know that?

MR. JOHNSON: No, I do not know that.

SEN. WEST: Were a substantial number of people disqualified?

MR. JOHNSON: I do not -- you know, you
have to define what is "disqualified." What's your definition of "disqualified"?

SEN. WEST: Seventy thousand. You know, in terms -- were there --

MR. JOHNSON: Are you talking about we received 70,000 applications that were incomplete, or are you telling me that we didn't --

SEN. WEST: You disqualified.

MR. JOHNSON: -- register and rejected 70,000 applications? There's a big difference between the two.

SEN. WEST: Did you know that Harris County disqualified nearly 70,000 voter registration applications that were received in time for the 2008 election?

MR. JOHNSON: I will tell you we had quite a few applications that were not completed correctly, and we mailed those people letters, the letter with a new application, and they had ten days to reply, and they received the original date of the first application, which still made them qualify.

SEN. WEST: So there's a process?

MR. JOHNSON: Yes, there's a process.

SEN. WEST: Okay. All right. Now, did you know that Harris County Election Officials have
acknowledged that in many polling locations in Harris County when voters were in line to vote at seven o'clock and had the right to cast a ballot, that they were routinely given provisional ballots rather than standard ballots?

MR. JOHNSON: That unfortunately is not my department. You would have to ask the County Clerk about that. The tax office just handles voter registration.

SEN. WEST: Okay. But you have processes in place in your office to handle different types of election-related issues?

MR. JOHNSON: Yes. On election day for that scenario you were just talking about, we had over 240 people on the phone, and we actually answered close to almost 60,000 -- I guess 55,000 phone calls on election day, helping people find their polling locations, helping the election judge qualify voters they were having problems with.

SEN. WEST: In terms of -- my colleague Senator Huffman went methodically through the voter registration application card, and I assume that you have processes in place there to verify all the information necessary to determine whether or not a person should be issued a voter -- voting registration
certificate?

MR. JOHNSON: We follow the Texas Secretary of State -- I mean, the Texas state law on elections.

SEN. WEST: But you do have processes in place in order to --

MR. JOHNSON: Yes. We have manuals that we have for all of our employees on the processes to, you know, handle voter registration applications.

SEN. WEST: All right. In terms of the handling of these applications, are individuals given certain specific duties as it relates to the applications, or do they just kind of look at the application, you have individuals looking at application after application?

MR. JOHNSON: With the volume that we handle, yes, you know, the assembly line method is proven to be the most efficient for handling high volumes, you know, in a quick manner. So, yes, we have different departments that do different tasks in each one. And the very first step when we receive an application is it is validated to make sure it is complete. And then after it's completed, even after that, they put a document number on it and image it, and that is cataloged in our voter registration system.
even on the incomplete ones so we can refer back at any point in time and find out if a voter submitted a complete or incomplete. But that is the very first step when they come through the door of our office.

SEN. WEST: Is there a statutory duty imposed by Texas law to go through and purge the voter registration rolls of persons that are deceased?

MR. JOHNSON: If you're referring to -- and the definition of "purge" in the Texas Election Code is by the National Voter Registration Act when you have reached the end of your suspense cycle.

SEN. WEST: Explain "suspense."

MR. JOHNSON: Okay. I'll start at the beginning on the definition of "purge" in the election code.

SEN. WEST: Okay.

MR. JOHNSON: If every two years we mail -- and this is where the majority of people end up on suspense. Every two years we mail every voter, registered voter, a new voter registration certificate or renewal certificate, the card that you get in the mail. If that card -- and it has instructions on that card. If the postman cannot deliver it, if the resident no longer lives at that address they're trying to mail it to, then the post office is
instructed to return it to our office as being undeliverable.

When your voter registration card is returned to our office as being undeliverable, that you no longer live at that address, we put you on what's called "suspense." You're still a registered voter. You can still vote. When you walk into a polling location, you're on the poll book, you're going to have an "s" by your name, which stands for "suspense." And the election judge will ask you, "Sir, would you please fill out a statement of residence?" An address correction card is basically what that is with your new address. Once you fill out that card or any other voter application, your name is removed off suspense.

By the National Voter Registration Act, once you go on suspense and you remain on suspense without updating your address, without filling out a change of address card or application for two General Election cycles, you are then removed from the voter roll.

SEN. WEST: Okay. Thank you. As it relates to checks and balances, do you have checks and balances in your office?

MR. JOHNSON: Yes, we do.
SEN. WEST: Describe those checks and balances.

MR. JOHNSON: I mean, are you asking me what the procedure is that I'm checking and balancing?

SEN. WEST: Of the registration cards.

MR. JOHNSON: We probably have the most robust in the state. And the fact that every document that comes through our door, the very first thing that happens to it is I give it a document number and I image it, and then it is logged into our computer system, and I can find that document at any point in time. So I have a count of how many documents I receive.

As the processors are working these documents, it records all the steps that happened to it throughout the way and will finally record when it is completed and the person is registered or they have been sent some notice of incomplete. I can run a report at any time and find out how many applications I have and what status.

SEN. WEST: Okay. As it relates to -- you have several -- I think you have about three different exhibits up there, and I'll refer to them that way. One of them you have -- I think it's 121 applications.
MR. JOHNSON: Yeah, we referred to that as the Dashwood.

SEN. WEST: Dashwood, okay. Let's talk Dashwood.

MR. JOHNSON: Okay.

SEN. WEST: Did the system -- did your system work in terms of the Dashwood applications? And what I mean by that --

MR. JOHNSON: Yes, it did.

SEN. WEST: What I mean by that -- hold on for one second. And what I mean by that when those applications came in, I assume that you assigned them a number, you imaged them and then sent them through the process to determine whether they were complete?

MR. JOHNSON: Yes. One of the hearts of any voter registration system is what we call the street guide, the list of streets broken into what streets and block ranges belong to a precinct. Because in order to register a voter, you have to assign them to some precinct so they receive the correct ballot, so they're voting for the correct districts and correct members, you know.

SEN. WEST: And that would be one of the, I guess, checks so to speak?

MR. JOHNSON: Correct.
SEN. WEST: All right.

MR. JOHNSON: So that is the heart of any voter registration system is the street guide. These particular -- these particular addresses or cards when they came in, the processor could not find this -- these streets, these addresses in our master list of addresses. Now, we get new streets all the time, so that's why we have a whole separate mapping department. These applications were sent to our mapping department so that they could do research to find this address. They did extensive research, actually drove to the street to look it up and found that this block range of that street did not exist.

SEN. WEST: Okay. And were all of the applications properly filled out?

MR. JOHNSON: Not all of them were properly filled out.

SEN. WEST: In fact the majority of them were not properly filled out. Is that correct?

MR. JOHNSON: I have not done a count on it. I would say, you know, a good percentage of them were not properly filled out.

SEN. WEST: Okay. So in that instance, the system worked?
MR. JOHNSON: Yes.

SEN. WEST: Okay. And so the process worked, and you were able to stop those particular applications from being processed.

As it relates to the issues where we had people that were voting that were deceased, can you tell us whether or not -- you can't tell us whether -- how those persons appeared, whether they went to the polling place, anything like that. Your records just indicate that someone voted. Is that correct?

MR. JOHNSON: No. Now, the voting information actually comes from our County Clerk's Office.

SEN. WEST: Okay.

MR. JOHNSON: They are in charge of elections, but it does appear on our computer system. We did a screen shot of those in these records. So if you want to -- I mean, I can go through the first one.

SEN. WEST: I mean, just a question. Can you tell us whether --

MR. JOHNSON: Yes, and let me just describe the code for any of you-all that have it.

SEN. WEST: Well, hold on; hold on for one second because I just want to know whether you can tell us whether or not they voted at the -- someone
voted at the poll.

MR. JOHNSON: Yes, we have a code.

SEN. WENTWORTH: Okay. Now, let me --

MR. JOHNSON: In the very first column -- let me tell you something.

SEN. WEST: Hold on for a second; hold on for a second, please. You can tell us that.

That's all I wanted to know.

MR. JOHNSON: Okay.

SEN. WEST: Now, as it relates to your office's responsibility for doing any type of check -- well, let me back up.

Does your office have a process that you utilize on a regular basis to check the probate -- check the probate court, anything like that, or check any type of records to determine whether persons on the voter roll are now deceased?

MR. JOHNSON: Correct.

SEN. WEST: How often -- you do have a process?

MR. JOHNSON: We have several processes.

SEN. WEST: Okay.

MR. JOHNSON: And to start with the -- you asked first about the probate. Probate courts are, in the Texas Election Code, required to send us
their cases that they process.

SEN. WEST: Okay.

MR. JOHNSON: We receive that documentation probably once a week from the probate courts.

SEN. WEST: Once a week?

MR. JOHNSON: Yeah, I would say roughly from Harris County.

Then our office takes this upon ourself -- because I will tell you it's probably one of the things that's most upsetting to a voter is when they come in and see their deceased familiar member on the roll. It's really upsetting. So we actually go through the Houston newspaper every day and cut out --

SEN. WEST: Every day?

MR. JOHNSON: Every day.

SEN. WEST: Okay.

MR. JOHNSON: -- and cut out the copies of the obituaries to check for those people to see if they're registered, to remove them.

And then the final way that this happens is actually through the Secretary of State's Office. They are really now the voter registrar for the State. They received from -- I believe it's the health department, the list on -- I don't know if it's weekly
or monthly basis, but some basis they receive the records from the health department of the people that have passed away, and they pass that through the statewide system and send us notification.

SEN. WEST: Let me ask you something. Is that the three methods that you utilized, the Secretary of State --

MR. JOHNSON: Yeah.

SEN. WEST: -- the obituaries and also the probate records, court records?

MR. JOHNSON: Yeah. Then the other one that I found that is currently not being recorded that we do periodically is we also go get the secretary's -- I mean not the Secretary's -- the Social Security Administration's death list. Unfortunately our Texas Secretary of State just receives death notices from the State of Texas.

SEN. WEST: How long --

MR. JOHNSON: So if you pass from outside the state, you would not be on that list.

SEN. WEST: How long has that process or those processes been in place?

MR. JOHNSON: They had been in place -- Help America Vote went into place in what, 2004. They probably didn't get the computer system implemented
SEN. WEST: Until 2006?

MR. JOHNSON: Yes.

SEN. WEST: And so when you look at
the -- those persons that -- quote-unquote that are
dead and someone else is voting, how far back does
that go?

MR. JOHNSON: I believe most of these
people were canceled in the year 2000.

SEN. WEST: I'm sorry?

MR. JOHNSON: I believe most of the
people on this list were canceled in the year 2000.

SEN. WEST: They were canceled? When
you say "canceled," they were purged from your roll?

MR. JOHNSON: Yes. Well, a purge is for
suspense voters.

SEN. WEST: Okay. What I --

MR. JOHNSON: Cancellations are for --
you know, if they are a deceased, felon, noncitizen --

(Simultaneous discussion)

SEN. WEST: Okay. So they were canceled
using the process or at least part of the process you
just mentioned?

MR. JOHNSON: Yes.

SEN. WEST: And part of it had not been
implemented by that time, probably 2005, but at least maybe the Secretary of State going through the obituaries was utilized for purposes of canceling those individuals?

MR. JOHNSON: You know, since I have been working in our office, we have -- we have done all four of those activities before -- before TEAM came into place where the state was in charge of it. We used to get records on about a monthly, quarterly basis from the health department that we would run against our voter roll, too. We requested those records, and we'd run them against our voter rolls to try to clean them up, but that was basically implemented in about the year 2000 when Mr. Bettencourt became the Tax Collector/Assessor.

SEN. WEST: Would it be a fair statement that -- say that at least as it relates to those two that Dashwood and those persons that have been canceled that there were processes in place in your office that enabled you, "you" being the office generically, to find those individuals -- find out those applications and then turn around and deal with them?

MR. JOHNSON: Well, we found these cases.
SEN. WEST: Okay.

MR. JOHNSON: And we found these cases, you know, I believe just by the due diligence of a good processor.

SEN. WEST: Okay. But you --

MR. JOHNSON: I think this is probably the tip of the iceberg --

SEN. WEST: Okay.

MR. JOHNSON: -- because we're not out looking for these cases. They were just ones we came across.

SEN. WEST: Okay. But the reality is that if someone submits a voter registration application that's not filled out correctly, that goes into a pile?

MR. JOHNSON: Well, that day we actually generate a letter out of our system, a letter of incomplete --

SEN. WEST: Okay. But I mean --

MR. JOHNSON: -- and we mail it to the voter.

SEN. WEST: But if you have an application that's not complete --

MR. JOHNSON: That's correct.

SEN. WEST: -- you will not issue any
type of voter registration card. Right?

MR. JOHNSON: That is correct.

SEN. WEST: Okay. You have a process in place that you can cancel out persons that are deceased also. Is that correct?

MR. JOHNSON: That is correct.

SEN. WEST: All right. And so you have obviously competent individuals working these processes because otherwise you wouldn't have them in your office. Now, so there are processes in place as it relates to those two?

MR. JOHNSON: That is correct.

SEN. WEST: Okay. Now, as it relates to the young lady that was -- received deferred adjudication, she wasn't convicted, she received deferred adjudication --

MR. JOHNSON: Okay.

SEN. WEST: -- what type of case was that? I me, what actually did your records show to lead you to believe she had done something?

MR. JOHNSON: What made us discover the case?

SEN. WEST: Yeah, what made you think that there was some fraud going on?

MR. JOHNSON: Like I said, a
processor --

SEN. WEST: Okay.

MR. JOHNSON: -- one of the ladies that actually keys in all the information into our computer system from the cards, received -- went over to the tray to be worked, picked up this pile. And as she's flipping through these cards processing them, she noticed right off the bat that these were all the same handwriting. You know, when you're looking at card after card --

SEN. WEST: Okay.

MR. JOHNSON: -- you notice that it's the same handwriting. In fact it was the same pen. You know, normally when you pick up a stack of cards, one would be blue, one would be black --

SEN. WEST: Sure.

MR. JOHNSON: -- you get purple, pastel, all kinds of colors. Now, they were all the exact same pen. You know, 60 of them in a row, the same writing, same pen, it sends off a red flag.

SEN. WEST: Okay. And I agree with you on that. And so again, the process was able to pick that up?

MR. JOHNSON: Correct.

SEN. WEST: Okay. All right. Now, you
would agree with me -- you may agree with me, I'll put it like that -- that you have processes in place in order to make certain that you don't certify or provide a voter registration card for someone that doesn't complete the application appropriately; that you have a process in place to cancel out individuals that are deceased; and you have competent individuals working within your establishment to -- if they see instances of what they believe rises to the level of voter fraud, that they take those cards out and review them or investigate them. Is that correct?

MR. JOHNSON: We have processes to try to catch, you know, voter registration fraud when it comes through. I will tell you the election code is written real loosely and doesn't give us the proper tools to do this job, I would say, in the best manner it could be done.

SEN. WEST: Okay. Let's -- you said "the tools." What tools would you need?

MR. JOHNSON: Well, this one -- one that was just brought up here for an example, that you can take our current voter registration application, write any name you want to on here, check the boxes that you don't have a driver's license or a citizenship, there's no validation check at all. All I'm looking
for is did you fill in every box on here, and you're
registered to vote. And there's nothing -- there's no
tools, there's nothing in the law that allows me to
validate this. There's no list to validate it against
that this is a real person. So I consider that kind
of a hole in the -- in the system.

SEN. WEST: Now, would you agree or
disagree that most states have the same process,
though?

MR. JOHNSON: I'm not real familiar
with all states' laws. I do know that all state laws
have to comply with the National Voter Registration
Act and Help America Vote.

SEN. WEST: Does this particular voter
registration card comply with that act?

MR. JOHNSON: It does comply with that
act, but I will tell you there are a lot of different
voter registration cards. I do see other states'
applications because they can mail them to me. You do
not have -- in Texas you do not have to use this
official card to register. As long as you have the
information that's required to register written on a
piece of paper, we can use it as a voter registration
card.

SEN. WEST: But it does comply with the
national act?

MR. JOHNSON: This does.

SEN. WEST: All right. Thank you on that. I don't think I have any other questions.

Thank you.

MR. JOHNSON: All right. Thank you.

SEN. DUNCAN: The Chair recognizes Senator Gallegos.

SEN. GALLEGOS: Thank you, Mr. Chairman.

Mr. Johnson, you said you're the Assistant Registrar at Harris County?

MR. JOHNSON: Associate Director. I have one person above me. Then he reports -- that person above me reports to the Tax Collector/Assessor.

SEN. GALLEGOS: Who is the Director?

MR. JOHNSON: Leo Vasquez is the Tax Collector/Assessor in Harris County now.

SEN. GALLEGOS: So he's the one right above you?

MR. JOHNSON: No. I have a person in between us.

SEN. GALLEGOS: Oh, who is the one in between?

MR. JOHNSON: His name is George Hammerlein.
SEN. GALLEGOS: Who?

MR. JOHNSON: His name is George Hammerlein.

SEN. GALLEGOS: Oh, okay. All right. But I mean, you work in the registrar's office?

MR. JOHNSON: Yes. George was not able to make it today --

SEN. GALLEGOS: Okay.

MR. JOHNSON: -- as your colleague behind you knows because of a knee injury.

SEN. GALLEGOS: But he's lucky; he's lucky, let me tell you. Okay. So you work in the registrar's office.

Now, Sen. West asked you about these first -- one of the first questions he asked you about these -- and I live in Harris County, by the way.

MR. JOHNSON: Yes, sir.

SEN. GALLEGOS: And that 13 timely -- 13,000 timely voter registration applications had not been processed for early voting. That came out in the news. You worked under Bettencourt. Right?

MR. JOHNSON: Yes, sir.

SEN. GALLEGOS: Okay. It came out in the news. Bettencourt was there. We had no answer
from him. You didn't know that? You told Sen. West
you didn't know that. You're the Assistant Registrar,
or whatever your title is, and you didn't know that?
I was there. Were you there?

MR. JOHNSON: Where is "there" that
I'm --

SEN. GALLEGOS: In Harris County, that's
where "there" --

MR. JOHNSON: I'm there in Harris
County. Now, you know what I need is --

SEN. GALLEGOS: Well, if you didn't know
that and you're the Assistant Registrar, is that your
job?

MR. JOHNSON: If you give me a date --

SEN. GALLEGOS: Is that your job?

MR. JOHNSON: No, it's not my job.

SEN. GALLEGOS: It's not your job to
look at these?

MR. JOHNSON: It's my job to process
those voter registrations.

SEN. GALLEGOS: I understand that, sir.

MR. JOHNSON: If you tell me a date --
sir, if you tell me a date, I can tell you exactly how
many cards we had worked and not worked.

SEN. GALLEGOS: Well, I can tell you
this: If I had your job, somebody asked me that question, about 13,000, the majority of them minorities that had not been processed when early voting started, I would know that because that's my job. That's what the taxpayers pay me for.

MR. JOHNSON: Can I ask you a question?

SEN. GALLEGOS: You didn't know that?

MR. JOHNSON: Can I ask you a question?

How do you --

SEN. GALLEGOS: No, no, no. I'm asking the questions. You cannot ask questions. You're a witness. I'm asking the questions.

Now, answer me yes or no. Is that your job?

MR. JOHNSON: I have not seen the article that you're referring to.

SEN. GALLEGOS: There's no article. It was in the papers. Everybody, everybody, everybody was arguing with Bettencourt.

MR. JOHNSON: Well, in the paper there was an article.

(Simultaneous discussion)

SEN. GALLEGOS: Obviously you were on vacation. I'm sorry.

SEN. DUNCAN: Let me please instruct
both of you to allow -- or not talk at the same time because the court reporter can't get your testimony.

SEN. GALLEGOS: I'll ask you again. Were you -- were you on vacation during that period?

MR. JOHNSON: In which period of time are you referring to?

SEN. GALLEGOS: Well, the election. That's exactly the question that Sen. West asked you, the election -- the election in the fall, the Presidential Election when early voting started.

MR. JOHNSON: If you're talking about the month before the election, no, I was not on vacation.

SEN. GALLEGOS: Well, then you should know these answers. That's what we pay you for. Is that not correct?

MR. JOHNSON: I'm sorry, sir. I have not seen that article. I don't know what you're referring to.

SEN. GALLEGOS: All right.

MR. JOHNSON: If you would like to know how many people -- how many voter registration cards I had on any particular day, you know, I can -- when I get back to the office, I can look that up for you.

SEN. GALLEGOS: That's not -- that's not
the question I asked you. That is not --

MR. JOHNSON: Well, you're asking me

about how many applications we --

(Simultaneous discussion)

SEN. GALLEGOS: That is not the question I asked you.

Okay. Let me -- let me go to the second question where Sen. West asked you and you did not answer him, and you're the Assistant Registrar in Harris County being paid by taxpayers, that Harris County disqualified nearly 70,000 -- 70,000 applications, the majority minority. I mean, you didn't know about this? That's a lot -- that's a lot of disqualifications. And you're the assistant registrar. You didn't know that?

MR. JOHNSON: What is the time period that you're talking about there in the article?

SEN. GALLEGOS: I just told you, right before -- right before the General Election in the fall of '08.

MR. JOHNSON: Is that -- is the month before the General Election, two months, three months? You know, I have to know a timeframe, and I can tell you exactly how many letters we sent out of incomplete during that time.
SEN. GALLEGOS: Right before the
election.

MR. JOHNSON: And that is not a -- that
is not a disqualification. A letter of incomplete
just says that you have missed one of the required
fields in the application. It gives them another
opportunity to register to vote.

SEN. GALLEGOS: These applications,
these people were disqualified. Either way you call
it, you can call it -- you sent out a letter, whatever
you say, they were disqualified. They couldn't vote.

All right. Let me -- let me go to
another question.

MR. JOHNSON: Can I ask you a question
while that --

SEN. GALLEGOS: No, no, you can't ask me
a question. I'm the one asking the questions.
Obviously whoever told you you could testify here
didn't tell you the rules of the Senate, whether we're
in the Committee of the Whole or in a Committee.

Now, let me ask you, I'm looking at a
document that Paul Bettencourt put out, and I was
there because he did -- he did a PowerPoint on -- and
I don't know if you were there with him when he did
this PowerPoint. It was called the Texas Voter
Registrar, Keeping It Real. Do you remember that one?

MR. JOHNSON: I have seen that PowerPoint.

SEN. GALLEGOS: Have you seen the PowerPoint?

MR. JOHNSON: Yes, I have.

SEN. GALLEGOS: All right. In his PowerPoint -- okay. I'm going by his document, the document he passed out to everybody there. I'm going by his -- it says "Paul Bettencourt" on there. He was the registrar, wasn't he?

MR. JOHNSON: Yes, he was.

SEN. GALLEGOS: Okay. It says here "City of Houston Case Study." This is his document, not mine. "The General Election of November 2001 and Runoff Election December 2001, these are results of the Harris County book audit on potential fraud in these elections." He said the majority of what he found was the wrong precinct. And there's another column that a majority of what he found was not registered. And in another column, the majority of what he found was deleted. And then the graph goes from zero to 700. It says "moved out of county" -- that was another one that he found -- "was right under 100."
Now, the real things that we're looking for and what this bill is trying to clear up is felons and not a citizen and deceased, which I'm going to get to in a minute. On felons it looks here barely ten, about ten per Paul Bettencourt's graph; not a citizen, it's barely a speck on this chart; and deceased, none. This is per his PowerPoint that he passed out at the seminar that I was at. These are his numbers, not mine, that say there was hardly anything from felon to not a citizen to deceased is almost zero. It's almost zero per his chart.

MR. JOHNSON: Can I explain this part?

SEN. GALLEGOS: And have you even seen this chart? Do you know about this chart?

MR. JOHNSON: I've seen that chart. Can I explain that chart, sir?

SEN. GALLEGOS: Go ahead and explain it.

MR. JOHNSON: Okay. That is a -- what we refer to as a poll book audit that happened after a City of Houston election in 2001. After every election I told you we review the poll book -- this is after the election is over with -- we review the poll book to find voter registration problems or discrepancies. One of the things we checked for since it was a City of Houston election, they have what they
call split precincts, not the whole precinct can possibly be in the city. So you can have a precinct that's voting, but you cannot live in the City of Houston. That's what those out-of-precincts are, is those people were in that precinct voting --

SEN. GALLEGOS: I know what they are.

MR. JOHNSON: -- but they didn't live in the City of Houston, but they voted in the City of Houston election. That is -- that is someone voting in the wrong district. That is against the law.

The ones that moved out of county, they didn't live in Harris County, and they voted in Harris County. That is someone that is not registered here or should not have been registered here that voted in our county.

SEN. GALLEGOS: Were any of these -- were any of these what you're saying voted in the wrong county, were they convicted?

MR. JOHNSON: They were all turned over -- that whole report was turned over to the District Attorney's Office, and once again --

SEN. GALLEGOS: All right.

MR. JOHNSON: -- they didn't have the evidence to make the prosecution.

SEN. GALLEGOS: That leads me to my next
question. You said you had 133 complaints that are
still at the District Attorney's Office. Do we know
if any of those were convicted? Do you know that?

MR. JOHNSON: No, I do not know the
status.

SEN. GALLEGOS: But you did say there
was 133 complaints at the D.A.'s Office, and you can't
tell us yes or no? You don't know?

MR. JOHNSON: No, the D.A. does not
report to me.

SEN. GALLEGOS: Okay. All right. All
right. Let's go back to your deceased. I don't know
how you explained it to Sen. West. Tell me the
process on how you -- okay. You go through the
Chronicle, you go through the obituaries. Is that
correct?

MR. JOHNSON: In our office our
procedures for finding out or trying to discover
deceased voters is, yes, we go through the obituaries
of the Houston Chronicle every day.

SEN. GALLEGOS: So you go through the
obituaries and you find out who died?

MR. JOHNSON: We get the probate records
from the probate court, and we get a list --

SEN. GALLEGOS: And you put them up
against -- up against your list on your registrar list?

MR. JOHNSON: Correct.

SEN. GALLEGOS: Okay. And you determine --

MR. JOHNSON: We get the list from -- we get the list from the Texas Health Department of the deceased voters here in Texas, and then periodically we also purchase the social security death index and run it against the voter roll to try to find matches.

SEN. GALLEGOS: And that's how you determine that they are deceased?

MR. JOHNSON: We determine that they are possibly deceased. Then on those voters we actually send them notices to the last known address. We call it "To The Family Of" letters asking the family members if they're still there to confirm our findings.

SEN. GALLEGOS: Okay. But the 24 in your testimony, that's kind of like the process you went through. You went through the newspaper, you went through the --

MR. JOHNSON: That is correct.

SEN. GALLEGOS: Okay. All right. Now, that's a "yes." Right?
MR. JOHNSON: Yes.

SEN. GALLEGOS: Okay. Well, let me --

Mr. Johnson, would it interest you to know that right before the end of the year it was time for me to renew my license, and I went to your office and --

MR. JOHNSON: Can I make a correction?

We do not do driver's license renewals.

SEN. GALLEGOS: Well, no, no, no, it's under -- it's under the registrar's office.

MR. JOHNSON: No, we do not -- that's under the Department of Public Safety. We do not do driver's license renewals.

SEN. GALLEGOS: Well, it was Bettencourt that called me.

MR. JOHNSON: If Mr. Bettencourt called you, he wasn't affiliated with our office.

SEN. GALLEGOS: Well, he's the one that called me. Are you sure you're not -- you're not with the driver's license renewals?

MR. JOHNSON: Are you talking about -- now, are you talking about your driver's license, or are you talking about your --

SEN. GALLEGOS: No, no, no. I'm talking about -- excuse me -- my license on my car.

MR. JOHNSON: Your auto plates?
SEN. GALLEGOS: Yeah.

MR. JOHNSON: The plates on your car?

Yes, we do do --

SEN. GALLEGOS: That's what you're in charge of. Right?

MR. JOHNSON: We do do that in our office.

SEN. GALLEGOS: Okay. That's a "yes."

Right?

MR. JOHNSON: Yes.

SEN. GALLEGOS: Okay. Would it interest you to know that when I went to renew my license and entered your office there at the registrar's office that they told me I could not renew, and they told me the reason was because on their rolls it showed that I was deceased? Did you know that?

MR. JOHNSON: No, I did not know that.

SEN. GALLEGOS: Okay.

MR. JOHNSON: That is -- that is a whole different department, and that is actually run by TxDOT.

SEN. GALLEGOS: Well, wait, wait, wait a minute.

MR. JOHNSON: And if that was a TxDOT record that showed you --
SEN. GALLEGOS: I went to the registrar's office. It was your office. It's was --

MR. JOHNSON: The TxDOT --

SEN. GALLEGOS: At that time, was Paul Bettencourt your boss or not?

MR. JOHNSON: Yes, he was --

SEN. GALLEGOS: Okay.

MR. JOHNSON: -- but we report to TxDOT.

TxDOT runs that organization. If there was your record marked as deceased, it was TxDOT that marked it.

SEN. GALLEGOS: Well, why would Paul Bettencourt call me and apologize?

MR. JOHNSON: We are -- we are an agent of theirs. I guess he was being --

SEN. GALLEGOS: Well, then it was your people.

(Simultaneous discussion)

SEN. DUNCAN: Okay. Let me -- let me interrupt. I hate to interrupt, but you're not making a record. And if you want to make a record, you really need -- both of you need to maintain the decorum of one speaking at a time. The court reporter cannot get your testimony if you're speaking over each other, and both of you are doing it. It's not just
one of you, both of you are. So if you could slow it
down a little bit and let the court reporter keep up
with you, that would be helpful for the record.

SEN. GALLEGOS: Mr. Chairman, I'm trying
to make a point here that it was the registrar's
office that was handling -- that was handling my
renewal of my license tag, and Mr. Johnson says that's
TxDOT, but it's the registrar that's handling that,
all the information on the registrar's computer -- on
the registrar's computer in that -- in that county
office. Is that correct? Is that yes or no?

MR. JOHNSON: That is a "yes" --

SEN. GALLEGOS: Okay.

MR. JOHNSON: -- that it's in our
office, but, sir --

SEN. GALLEGOS: All right.

MR. JOHNSON: -- you were just talking
about things that I need, and that's the tools I need.
TxDOT will not let us link into their system to copy
or get access to those records so that we can match it
up to voter rolls to find out when people move so that
we can send them notices or applications to try to get
them re-registered. So if you would like to help us,
pass a bill that would allow TxDOT to give us that
information.
SEN. GALLEGOS: But it was your computer, not TxDOT's.

MR. JOHNSON: No, it's TxDOT's computers. The computers that we use in our office belong to TxDOT.

SEN. GALLEGOS: But it was your agents that were handling it.

MR. JOHNSON: Yes, they work for the Harris County Tax Office.

SEN. GALLEGOS: Okay. All right.

MR. JOHNSON: The computer system is TxDOT's, and it's closed, and they do not let us have access to it.

SEN. GALLEGOS: Well, if you had me deceased there on that computer at the registrar's office, whether it's TxDOT or not, and your agents were handling it, if I had -- if I had voted during that time that you had me deceased, would I show up -- would I show up on your rolls?

MR. JOHNSON: You were still a registered voter on our rolls. That TxDOT record has nothing to do with your voter registration.

SEN. GALLEGOS: That's not what -- that wasn't my question. On your computer, the computer that your agents handle --
MR. JOHNSON: On the computer that I'm in charge of that handles the voter registration roll, you are an active voter.

SEN. GALLEGOS: How do you know that?

MR. JOHNSON: Did you vote?

SEN. GALLEGOS: I'm talking -- yeah, I voted, but I'm talking about during the time --

MR. JOHNSON: Then you're an active voter.

SEN. GALLEGOS: -- during the time that the computer showed that I was deceased, had I voted, would I be on that list with those 24? Yes or no?

MR. JOHNSON: No, you would not have been on that list.

SEN. GALLEGOS: Are you sure?

MR. JOHNSON: I'm sure.

SEN. GALLEGOS: You're positive?

MR. JOHNSON: I'm positive.

SEN. GALLEGOS: Okay. All right. So -- and your office is not -- so you're saying it's Beverly Kaufman's Office that's in charge of the last question that Sen. West asked you on the provisionary ballots given after seven o'clock instead of letting them cast their ballots. Is that correct?

MR. JOHNSON: That is correct.
SEN. GALLEGOS: Okay. Mr. Johnson, thank you.

SEN. DUNCAN: Mr. Johnson, I don't think there's any other queued up. If you want to -- you are excused. Thank you for your testimony.

MR. JOHNSON: Thank you.

TESTIMONY BY DANIEL B. KOHRMAN

SEN. DUNCAN: The Chair calls Daniel Kohrman. Mr. Kohrman, do you have written -- you have written testimony, I believe. It will be Exhibit No. --

MR. KOHRMAN: Yes, sir.

SEN. DUNCAN: -- 35. We'll go ahead and put that in the record.

(Exhibit No. 35 marked and admitted)

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

MR. KOHRMAN: Thank you. Good morning, Mr. Chairman, Members of the Committee. My name is Daniel Kohrman. I'm a senior attorney with the AARP Foundation. The foundation is the charitable arm of AARP. I represent AARP, AARP's members and older persons generally.

One of my responsibilities is to represent the cause of access to the ballot for older
voters. By way of background, I'm one of the lawyers for voters, including older voters, in the litigation regarding photo ID in Arizona and in Georgia. I've also filed briefs on behalf of AARP in photo ID cases in Michigan and Missouri in the state courts and also in the U.S. Supreme Court in the Indiana case that we've discussed. Finally, AARP has filed a brief supporting the senior citizen plaintiffs in the absentee ballot case here in Texas, the Ray case that we discussed a little earlier this evening.

And just so that you know a bit more about me before I came to AARP, about seven years ago I worked for a big law firm, a civil rights organization, the lawyers committee that you heard about before, and also for the U.S. Department of Justice.

As you know, AARP members vote in very large numbers and are very proud of their active participation in the political process at all levels, state, local and federal. I work out of the headquarters in D.C., but today I'm here representing AARP of Texas, which is one of 53 state offices we have across the U.S.

I want to say that given the intense partisanship that we've seen here today and that has
developed around this issue of voter ID, photo ID, I want to emphasize that AARP is a nonprofit nonpartisan organization dedicated to addressing the needs and interests of Americans age 50 and older. AARP has no interest in the partisan aspects of the photo ID issue.

What we do care about is representing the interests of older Americans. We have more than 40 million members nationwide and about two and a half million here in Texas, and both in this state and across the U.S. We're the largest membership organizations of older persons and older voters.

All right. While I appreciate the opportunity to speak with you here so late and so early about Senate Bill 362, just to start, I want to say that AARP's overall perspective is that the right to vote is the most basic right in our Democratic system, and our view is that legislative bodies and politicians should tread carefully in the field of voting rights. Voting rights should not be casually restricted.

Now, we understand that historically and under our Constitution the states are the principle sources of laws and regulations in the area of voting, but we do not conclude from this that states should
feel free to take whatever action is expedient. Certainly where there's a need to act to protect voters, there's a duty to step forward. But absent such a need, our view is that states have a duty not to rush in. And as it is said of doctors, so it is true in the field of voting and elections, first do no harm.

AARP policy is clear. We have focused on trying to encourage simple, fair procedures. And most relevant for our purposes here today our policy states that state government should adopt procedures to detect and prevent voter fraud, but policies that do not permit arbitrary and discriminatory reviews, ID challenges and misuse of provisional ballots in ways that discourage voter registration and turnout. And our concern about photo ID laws is that they do just that.

Just this past Sunday in the Rio Grande Guardian, the paper reported one in five senior women don't have a driver's license, quoting the U.S. Census Bureau. 18 percent of Americans over age 65 don't have a driver's license, quoting the Brennan Center from whose representative you heard earlier today, and also that 37 percent of Texans over 80 don't have a driver's license.
We did some surveys in connection with some of the litigation matters you've heard about. In Indiana our survey suggested that 3 percent of people over 65 have neither a driver's license nor a state-issued ID, and that's about 23,000 people. In Georgia our estimates suggested over 100,000 over age 65 lack a driver's license and the number is something like double that in Missouri.

What's hard to understand for us is why public officials would embrace measures that have this kind of impact on older voters when in the next couple of decades the older population will be growing by leaps and bounds so that most of the growth in the voting population will be among the older voters.

I want to refer you to testimony that AARP Texas' Advocacy Director Amanda Fredericksen gave to a House Committee in 2006 noting some of the harms and difficulties posed for older persons who seek to access the ballot, but are caught up in photo ID requirements and are precluded from voting.

There was an 80 year old who sought a state-issued ID card in Indiana. We put this in our Supreme Court brief. She finally succeeded only after paying multiple fees, navigating a maze of public record laws and making multiple trips to public
offices. And then there was a 61-year-old social
security recipient who was barred from voting in the
lobby of her retirement home as she had done for past
elections. Poll workers who had known her for years
were not allowed to let her vote because she didn't
have the form of ID, and we're concerned that's going
to happen in Texas.

Now, let me cut to the chase here, and
I've summarized in my testimony some major concerns we
have with this law in particular. We've talked about
big picture issues, other states, other cases and
we've talked, to some degree, precious little about
the actual bill that's before this chamber.

The first concern is that the law does
very little to educate the public about the changes it
proposes to make. It relies almost exclusively on the
individual voter registration renewal process. It
relies on Websites, the Secretary of State and the
counties, but as far as I understand it, only
one-third of the counties actually have Websites.

Our members in particular, I would have
the concern, would both be adversely affected by a
process that relies on a routine mailing procedure.
They have voted for many, many years and cannot be
expected to automatically pick up on all the new
changes. More likely they're going to assume that their registration is just as it has been before. And as far as Websites, our members are getting ever more tech savvy, but relying on the Internet to serve older voters is a dangerous proposition.

The second concern is a related one. There's lack of plans for public outreach. One way to describe the approach of this bill, in our frame of thinking, is that it's completely passive. You get a mailing, you have a bit of information posted on a Website. There's nothing going out to the public. There's nothing going out in terms of mobile vans as there was in Georgia or other public education. We heard about advertisements. I noted that nothing of that was planned to involve photo ID in particular.

As far as the substantive concern about what the experience is like for voters, I just want to make two quick points.

SEN. DUNCAN: I've been holding everybody pretty strict. If somebody wants to ask a question --

MR. KOHRMAN: Okay.

SEN. DUNCAN: I think Sen. Uresti -- your time has expired.
QUESTIONS FROM SENATE FLOOR

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

SEN. URESTI: Thank you, Mr. Chairman.

Mr. Kohrman, good morning, and I'll follow up on what you were just completing in a moment, but I wanted to go back to something that you just talked about with regard to the Websites. And I think you mentioned in your testimony one-third of the counties have Websites. But do you have an idea of how many of your members actually have a computer much less access to the Internet?

MR. KOHRMAN: Well, I would say two things: One, I think it's very easy to stereotype older voters and older people. I think more and more of them -- the profile is more typical of the average population than what most people think. But the plain fact of it is when you look at people who are infirm, older people with disabilities that is, older people in assisted living or nursing homes, those kinds of residential situations, people of low income certainly, they are very unlikely to have access to the Internet and very unlikely to benefit from that kind of information.

SEN. URESTI: And one of the reasons I...
bring that up, and I realize many of our seniors are more advanced when it comes to the Internet, but speaking about my parents specifically and they're in their 70s, very intelligent. However, my father refuses to use a computer, probably because he doesn't know how, much less accessing the Internet. So I'm sure that there are many other seniors in Texas, specifically in the district that I represent, that don't have access.

You were about to complete a sentence, and I know the time cut you off. Would you like to finish that thought?

MR. KOHRMAN: No. I just -- that the public outreach activities that were demanded by the court in Georgia, in effect, are very much relevant here because what we have is a law that proposes to take effect at the very beginning of 2010 and yet relies almost completely on a notification process in the course of renewing registrations that has, as I understand it, a two-year cycle.

Therefore, in our view, the minimum time that should be required for this set of new requirements to be effective should be at least two years and probably longer than that so that you have a whole cycle. If you're going to rely on mailings that
people will only get some time in the next two years, it should be a cycle that long at least before this law takes effect.

SEN. URESTI: And the reason for the two years is so that you can allow for training and outreach?

MR. KOHRMAN: Well, in the first place, there's no guarantee that people will be notified of the requirements of the law at all. Given that there's nothing in this bill by way of funding or programs, at least as far as I can tell, to contact voters about the specific requirements of photo ID, people won't know. And what you will have is people showing up at the polls, registered voters who have -- who expect that they can vote on the terms they always have. And what they will find -- in particular in some circumstances, they will come perhaps without their registration. And under current law if you come without your registration but you're on the rolls, you sign an affidavit and you cast a regular ballot. But under the law as it would be revised, you have to show photo ID.

Now, if you haven't had notice except if you read the papers closely enough to know what this body and the House may pass someday, you're not going
to know that requirement. And so what you're going to
do is you're going to show up -- and we think that's
typical of our members. They are going to do what
they've always done, they're going to show up, they
may forget, they may misplace, they may lose, they may
not get in time their certificate. They show up to
vote and whereas in the past they could just sign an
affidavit, cast a regular ballot, they'll have to file
a provisional ballot that won't be counted, and that's
a big problem for us.

SEN. URESTI: And we've heard over the
past several hours of testimony from some of my
colleagues that it's no big deal, that you can just
show up with an electricity bill or another piece of
documentation, but I would assume that many of our
seniors may be widowed, and some of the documentation
that they have was in their husband's name, for
instance, or perhaps in their wife's name. And as you
said, Mr. Kohrman, they may show up, they may be
waiting for a ride from one of their sons or their
neighbors at the end of the day. By the time they do
show up to vote, they will not have that
documentation. Do you think that's going to be a
problem for our seniors when it comes time for voting?

MR. KOHRMAN: Well, we've heard from a
number of people about problems with some of the specific alternative forms of identification that have been alluded to by some of the proponents. And of course older voters have and older persons have particular problems with some of those forms of ID, very much so. Older women may have been -- have moved into the state from other states. They may have marriage certificates from -- with a name that's -- in other words, the documents that they might need to get a birth certificate are different in name than their current married name, they've changed their name. And so if they have to get an out of state marriage document or divorce decree or birth certificate, they're going to have trouble.

We've had problems in many of these southern states with older -- older woman, older men who were born -- and this really applies to people of color in particular who were born outside of hospitals and may not even be able to get a birth certificate.

SEN. URESTI: Do you see any potential barriers for our seniors that are trying to obtain a photo identification?

MR. KOHRMAN: Well, what is of concern, as I've said, is the fact that there's no -- there's no effort to notify them, and there's not a realistic
set of measures that will likely notify them.

Furthermore, there appears to be no plan or money for training of the actual people who will interact most often and most intensely at the polling place with all voters, but particularly older voters, election officers so called. There appears to be no money or plan for training these folks so that when people show up at the polls surprised by the new laws and the changes, what we're concerned about is that our people will have particular troubles, especially if a lot of folks that they're going to have to interact with are given insufficient training.

SEN. URESTI: Mr. Kohrman, do you think there will be additional barriers if this legislation does pass for the voters that may reside with family members who are in an assisted living facility or in a nursing home?

MR. KOHRMAN: Well, that raises the issue of outreach again. Our fundamental view is that -- and you've heard this from many people -- that this is an issue that is a solution that's looking for a problem. Our view of it is that what this chamber should focus on is the fact that there are lots of voters who need assistance and encouragement and facilitation to get them to vote.
We have lots of people, for instance, who change addresses when they move into different residential facilities when they become somewhat more infirm or interested in finding a situation where they can age in place and have access to medical care.

When they change their address and if they don't have family who are looking out for them, what they may need is registrars who are going out to facilities where older people are to register people to vote and to help them to vote.

There are states across this country that have allocated resources, not to these ID checks that we feel are not very productive and not likely to solve this supposed problem of fraud, but instead of allocating their resources to seek out voters who have -- who are not participating but want to participate. So we would like -- we would like state officials and county officials to be seeking out older voters who are still capable of voting, but may have mobility challenges that keep them from voting like they did 10, 20 years ago.

SEN. URESTI: Mr. Kohrman, we've heard testimony about different forms of nonphoto identification, and one example that I heard earlier was Texas -- was a Medicaid card. Do you know if
Texas actually issues a Medicaid card?

MR. KOHRMAN: Well, I apologize. I don't really know that, but there may be -- there may be some forms of this photo ID that are available to many seniors, and we're not saying that this is an impossible situation, but I will say about the best you can say about this photo ID proposal is that it is not as harsh and not as bad as the most restrictive laws in a few states, but it imposes all kinds of burdens on voters who are the most committed to participating in our democracy, which are older voters, and it's going to make a lot of unnecessary impediments.

If you imagine the situation -- another situation that's covered by the law, which is someone who shows up at the polls who has their voting card but isn't on the rolls, and that's, I think, Section 9 of the bill. Right. It seems to me that that would be another situation where instead of requiring a photo ID, what you should require is a -- is an affidavit, which under other circumstances is provided for under current law.

A lot of these older voters are well known to people at their polling place. There's no need to impose these additional requirements. I would
find it highly dubious if I were to hear that there is
any evidence or any record that older voters in
particular pose a problem of fraud, that there's any
worry that people 50 -- age 50 and older are the ones
who have been identified as posing a risk of illegal
voting activities.

What we need to do is to reach out, take
advantage of the fact that these mature voters are
very committed to participating and yet face a variety
of challenges over time as they age that makes it more
difficult for them to participate. This law raises
barriers where there need be no such barrier.

SEN. URESTI: And, Mr. Kohrman, by
placing those additional barriers through this bill on
our seniors, do you -- is it your opinion that there
will be some seniors that may not be able to vote come
election day?

MR. KOHRMAN: Well, it's interesting.
We've heard a lot of back and forth about what
aggregate data shows. You know, a state -- a state
shows big increases in turnout, and some people think
they know exactly what the sole cause of that is, and
supposedly it's photo ID.

I think -- and this is by way of
answering your question. I think what we -- what
we -- what's most important here is what we don't see in the numbers. You can't measure the effect on people who are deterred from voting particularly when their numbers are swamped by turnout increases that result from a variety of causes. And what we fear is that lots of older voters -- and remember older voters are going to be a growing population. So to some degree if you just have a gradual growth in the turnout of older voters, that's a problem because that -- this should be a very significant growth trend as the population ages.

So what we're concerned about is that people will -- whether they're in their 50s and have disabilities, whether they're in their 40s, for that matter, but certainly greater numbers in their 60s and 70s who are very avid voters, you know, voting for some of our seniors is the highlight of the year or a highlight of their life. It shows that they are still active, they're still engaged, they're still contributing to society. And what we fear is that if the impediments grow and become more diverse, they're just not going to show up. And so what is important is what we won't see.

And again, when the numbers are growing in terms of older voters, what you'll see is an
increase. And so people will say, "Well, older voters are growing in greater numbers, so there's no problem," and we think that's just a very short-sighted and narrow view that isn't called for.

SEN. URESTI: That's all the questions I have, and thank you, Mr. Kohrman. Thank you, Mr. Chairman.

MR. KOHRMAN: Thank you.

SEN. DUNCAN: The Chair recognizes Sen. Ogden.

SEN. OGDEN: Mr. Kohrman, I represent a lot of people in the AARP, and I wonder --

MR. KOHRMAN: Glad to hear that.

SEN. OGDEN: I wonder how you purport to represent them. How does the AARP, when you talk on behalf of the AARP, come to the position that you have espoused?

MR. KOHRMAN: Well, you may know, you may be surprised, I don't know. We spend a great deal of time and effort surveying our membership. I would venture to say more so than any membership organization in the United States we allocate more resources.

SEN. OGDEN: So you surveyed your membership on this state law? Did you survey the
Texas membership, or did you just survey the membership of the Continental United States? What membership did you survey?

MR. KOHRMAN: Well, now you're -- now you're taking what is a huge allocation of resources suggesting it should be even probably more than anyone would suggest reasonable. No, Senator, we don't -- we do not every year survey nationally and statewide --

SEN. OGDEN: All right. So then --

MR. KOHRMAN: -- on every proposal, but we have surveyed on the specific issue of photo ID. I'm sorry. I'm not trying to filibuster here. I just want to answer on photo ID, but also more generally on government integrity.

SEN. OGDEN: All right. So what was the result of your survey on the Texas voter identification bill?

MR. KOHRMAN: Well, we haven't surveyed on the Texas bill because, of course, I don't think it's been out there very long, but we have the Georgia law, we have the Arizona law. And frankly, Senator, there is a commonality to a lot of these laws, and that's what we built on.

SEN. OGDEN: Okay. So what was the result of your survey amongst Texans who are members
of the AARP who you stand up here purporting to rep
represent? What is their opinion on the photo ID bill? How do you know and how do you get -- how does your organization determine that you have the right to stand up and speak for them, some of whom are on this floor right now and I think have absolutely no idea that the AARP has the position that you've espoused?

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

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

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

SEN. OGDEN: Okay.

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

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

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

SEN. OGDEN: Okay.

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

SEN. OGDEN: All right.

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

MR. KOHRMAN: No, no, I --

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

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

SEN. OGDEN: How do you --

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

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

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

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

MR. KOHRMAN: Sure, sure.

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

MR. KOHRMAN: Sure.

SEN. OGDEN: Okay. So --

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

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

MR. KOHRMAN: No, we don't.

SEN. OGDEN: That identification is either through some sort of list that you've obtained identifying people who are over a certain age; that identification is associated with a form they fill out to sign; that identification is associated with a membership card; that identification is associated

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with maybe some commercial transaction; I mean, identification is involved throughout this process. So my question is, can you think of a single member in the AARP that could not meet the requirements in this bill, a single one? And tell me who that is.

MR. KOHRMAN: Well, I would point --

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

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

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

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

SEN. OGDEN: Yes, I do.

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

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

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

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

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

MR. KOHRMAN: Well, let me just respond.

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

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

SEN. OGDEN: Okay.

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

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

SEN. DUNCAN: Thank you, Sen. Ogden. Senator Patrick?

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

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

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

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

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

MR. KOHRMAN: Well, let me answer --

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

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

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

MR. KOHRMAN: Uh-huh.

SEN. PATRICK: -- you said that your concern was for those members that may not -- or those people who may not be -- can't afford $12 a month to be in AARP, that AARP members wouldn't be impacted.

So is your testimony that AARP members won't be impacted? That's what you said a moment ago.

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

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

MR. KOHRMAN: -- low-income seniors.

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

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

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

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

SEN. PATRICK: Is there a name?

MR. KOHRMAN: -- have concerns that they

would not be able to provide --

SEN. PATRICK: Is there a name?

MR. KOHRMAN: -- the kind of ID that is

required in these laws.

SEN. PATRICK: So you don't have any

names. You just have this kind of general small

percentage.

So let me ask you this question: Have

you done a survey of Senate District 7 in Harris

County?

MR. KOHRMAN: Can I answer? Because my

answer was just given to me when it was not the answer

I would have given.

SEN. PATRICK: Let me -- let me ask

another question. Did you survey any one in Senate

District 7 in Harris County who is a member of AARP?

MR. KOHRMAN: Not as far as I know.

SEN. PATRICK: Okay. Would it shock you

if I told you that the majority of seniors in Senate

District 7 support voter ID?

MR. KOHRMAN: I would challenge you to

demonstrate that you've surveyed them and know who
those members are.

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

MR. KOHRMAN: Okay. All I can --

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

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

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

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

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

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

MR. KOHRMAN: Okay.

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

MR. KOHRMAN: Thank you.

TESTIMONY BY COBY SHORTER

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

MR. KOHRMAN: Actually, Mr. Chairman --

Mr. Chairman?

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

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

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

MR. KOHRMAN: Okay.

SEN. DUNCAN: Thank you.

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

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

Go ahead. Do you have any written materials?

MR. SHORTER: No, sir.

SEN. DUNCAN: Okay.

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

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

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

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

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

QUESTIONS FROM SENATE FLOOR

SEN. DUNCAN: The Chair recognizes Sen. Fraser.

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

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

MR. SHORTER: Yes, sir.

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

MR. SHORTER: Yes, sir, I do.

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

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

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

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

MR. SHORTER: That is correct, sir.

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

MR. SHORTER: Yes, sir.

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

MR. SHORTER: That is correct.

SEN. FRASER: Now, is that what happens?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. SHORTER: Yes, sir.

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

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

MR. SHORTER: Yes, sir, we would.

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

MR. SHORTER: Hypothetically, yes, Senator.

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

MR. SHORTER: Yes, sir.

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

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

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

MR. SHORTER: Yes, sir.

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

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

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

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

MR. SHORTER: That is correct.

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

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

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

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

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

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

MR. SHORTER: It is possible, Senator.

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

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

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

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

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

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

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

    MR. SHORTER: Yes, sir.

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

    MR. SHORTER: Yes.

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

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

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

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


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

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

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

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

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

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

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

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

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

MR. SHORTER: Uh-huh.

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

MR. SHORTER: For purposes of education of --

SEN. VAN de PUTTE: Yeah.

MR. SHORTER: -- of the new bill?

SEN. VAN de PUTTE: Yeah.

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

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

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

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

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

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

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

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

SEN. VAN de PUTTE: According to the fiscal note, your -- the Office of the Secretary of
State.

MR. SHORTER: Uh-huh.

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

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

MR. SHORTER: Yes, ma'am.

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

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

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

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

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

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

MR. SHORTER: Yes, ma'am.

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

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

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

MR. SHORTER: Thank you.

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

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

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

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

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

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

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

Sen. Van de Putte, you're recognized.

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

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

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

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

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

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

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

MR. SHORTER: Right.

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

MR. SHORTER: Yes, ma'am.

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

MR. SHORTER: Yes, ma'am.

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

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

SEN. VAN de PUTTE: Van de Putte.

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

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

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

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

MR. SHORTER: Yes, ma'am.

SEN. VAN de PUTTE: -- for naturalized
citizens --

MR. SHORTER: Yes, ma'am.

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

MR. SHORTER: Yes, ma'am.

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

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

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

MR. SHORTER: Thank you.

SEN. VAN de PUTTE: Thank you.

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

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

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

Whether --

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

MR. SHORTER: That is correct.

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

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

MR. SHORTER: Yes, sir.

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

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

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

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

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

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

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

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

snuck away I think briefly to wish him a happy 

birthday, but we really appreciate your being with 

us --

MR. SHORTER: Thank you.

SEN. WATSON: -- and hope you will tell 

him we said happy birthday.

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

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

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

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

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

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

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

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

MR. SHORTER: That is correct, sir.

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

MR. SHORTER: That is correct.

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

MR. SHORTER: That is correct.

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

MR. SHORTER: That is correct, Senator.

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

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

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

MR. SHORTER: Yes, sir.

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

MR. SHORTER: Yes, sir.

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

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

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

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

MR. SHORTER: Correct.

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

MR. SHORTER: Yes, sir.

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

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

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

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

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

MR. SHORTER: Not as an agency alone.

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

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

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

MR. SHORTER: No, sir. I recall.

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

SEN. DUNCAN: Thank you, Sen. Watson.

The Chair recognizes Sen. Patrick.

SEN. PATRICK: Thank you, Mr. Chairman.

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

MR. SHORTER: (Nodded)

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

MR. SHORTER: Okay.

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

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

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

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

SEN. PATRICK: All right. Thank you.

SEN. DUNCAN: Thank you, Sen. Patrick.

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

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

MR. SHORTER: Yes, sir.

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

MR. SHORTER: Yes, sir.
SEN. WATSON: Thank you very much.
Thank you, Mr. Chair, for letting me do that out of order.

SEN. DUNCAN: The Chair recognizes Sen. Davis.

SEN. DAVIS: Good morning.
MR. SHORTER: Good morning.

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

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

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

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

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

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

SEN. DAVIS: I'd appreciate that.

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

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

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

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

MR. SHORTER: Yes, ma'am.

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

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

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

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

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

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

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

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

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

SEN. DAVIS: I would appreciate that.

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

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

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

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

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

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

MR. SHORTER: Thank you, Mr. Chairman.

TESTIMONY BY DENNIS BOREL

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

    MR. BOREL: (Inaudible)

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

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

SEN. DUNCAN: Hang on just a minute.

    MR. BOREL: Sure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

QUESTIONS FROM SENATE FLOOR

SEN. DUNCAN: Thank you, sir.

Sen. Zaffirini, you're recognized.

SEN. ZAFFIRINI: Thank you,

Mr. Chairman.

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

MR. BOREL: Yeah, absolutely, certainly in the case of the driver's licenses. Obviously one of my member organizations is the American Council for the Blind of Texas. I mean, 100 percent of them don't have driver's licenses. Other people with cerebral palsy, quadriplegic spinal cord injuries, amputations, cognitive disabilities, traumatic brain injury, all have far less likelihood of driver's licenses and
passports. It's more a function of the fact that generally considered to be the lowest income demographic group in our society and, therefore, less likely to travel.

SEN. ZAFFIRINI: Have you read Senate Bill 362?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. BOREL: Yeah.

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

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

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

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

MR. BOREL: So are you, Senator.

SEN. DUNCAN: Senator Ogden?

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

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

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

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

MR. BOREL: It is.

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

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

SEN. OGDEN: Might have the what?

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

SEN. OGDEN: Well --

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

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

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

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

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

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

(Exhibit No. 36 marked and admitted)

TESTIMONY BY GARY BLEDSOE

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

MR. BLEDSOE: I do.

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

(Exhibit No. 37 marked and admitted)

MR. BLEDSOE: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

QUESTIONS FROM SENATE FLOOR

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

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

MR. BLEDSOE: Sure. Thank you, Senator.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. BLEDSOE: Thank you, Senator.

SEN. DUNCAN: Thank you, Mr. Bledsoe.

The queue is clear. You're excused.

MR. BLEDSOE: Okay.

SEN. DUNCAN: We appreciate your presence today.

TESTIMONY BY ERIC NICHOLS

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

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

MR. NICHOLS: Thank you, Mr. Chairman.

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

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

MR. NICHOLS: Thank you, sir.

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

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

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

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

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

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

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

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

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

The second point for context is this:

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

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

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

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

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

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

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

Now, of course, once these investigations are conducted by our office, a significant number of these cases are going to be determined to not rise to the level of an election code violation either based on the facts or law. However, these 192 referrals have to date resulted in
30 prosecutions of offenses under the election code by prosecutors from the Office of Attorney General, again, often working in conjunction with local prosecuting attorneys in Texas counties. And in terms of the cases that have been prosecuted, three of those cases involved General Elections, the other 27 involve Party Primary or Special or Local Elections.

The 30 cases involved in general, fact scenarios such as these, unlawful abuse of the mail-in ballot process, campaign finance violations, unlawful conduct at the polling place and other obstruction of the elections process.

Finally to give you a general idea of the kinds of cases that go behind these numbers, I just want to briefly lay out a couple of fact patterns for you. The first fact pattern that I've talked about in the House Elections Committee before resulted in a five-year sentence by a jury for a defendant who was involved in a scheme that resulted in two resident aliens voting improperly in a Local Party Primary Election. This case arose out of Calhoun County. It was tried in Jackson County.

The second fact pattern concerns persons who fill out voter registration applications using names and/or addresses of nonexistent persons. We've
had several cases that have involved that fact scenario.

The third fact pattern involves situations in which a person attempts to impersonate or does impersonate others in casting a ballot.

There's one case that's been prosecuted that I think you-all have heard about involving an attempt to vote a mail-in ballot of a deceased mother.

SEN. DUNCAN: I'm sorry. Your time has expired.

Senator Huffman, you're recognized.

QUESTIONS FROM SENATE FLOOR

SEN. HUFFMAN: Thank you, Mr. Chair.

Mr. Nichols, did you want to just finish quickly?

MR. NICHOLS: Just real quick.

SEN. HUFFMAN: Okay.

MR. NICHOLS: I just wanted to finish that. On the fact pattern is also evident in cases that are under investigation by our office where there are allegations that votes were cast at the polling place by persons other than the registered voter.

And with that, there were some additional items that I want to speak about, but I'll be happy to answer questions.
SEN. HUFFMAN: All right. Basically I just want to summarize that it is -- the way that the Attorney General starts investigating the case is always through a referral from the local officials. Is that correct?

MR. NICHOLS: Yes, Senator. It can come from the Secretary of State, from voters through the election code or from local Election Officials or other local law enforcement.

SEN. HUFFMAN: Has the AG taken on the responsibility of going out into the communities and sitting up at polling places or going to the registrar's office in any way, shape or form?

MR. NICHOLS: No, Senator. That's not our charge.

SEN. HUFFMAN: All right. In looking at the numbers that you've given us and that you've summarized, it's clear that, in fact, there are a lot of difficulties in prosecuting these cases. Is that correct?

MR. NICHOLS: It is. It depends on the kind of violation involved, but all cases of this type are difficult to both investigate and prosecute.

SEN. HUFFMAN: And is that just the nature of the cases and the fact that, of course, they
have to be proved like any other criminal case, and
that is, you have to -- the level of proof is proof
beyond a reasonable doubt. Is that correct?

MR. NICHOLS: Absolutely. As you know,
there are certain screenings that go on through the
investigation of a case, both internally and of the
law enforcement agency. All the cases that we
prosecute are eventually -- if there is a decision
made to proceed to a grand jury, to present it to a
grand jury which makes the decision as to whether
charges will issue. And then, of course, you've got
ultimately a jury trial where those allegations don't
mean anything unless a jury of that person's peers
enters a conviction.

SEN. HUFFMAN: Would the bill that's
being proposed that would establish or attempt to
establish voter identity assist in the prosecution of
at least some of these cases to help to establish the
identity element that is often missing or just
impossible to prove under current law?

MR. NICHOLS: Well, Senator, I don't
understand that I'm here to testify about the bill one
way or the other.

What I would say just generally speaking
any effort that would assist in detecting persons who
attempt to vote illegally could conceivably give rise to evidence that would be useful in a criminal case.

SEN. HUFFMAN: All right. I want to ask you about a document that we have and ask you if it is a work product of the AG's Office that we can enter into the record.

Mr. Chair, may I have permission to approach the witness? Mr. Chair, may I approach the witness briefly to show him --

SEN. WHITMIRE: Sen. Duncan, she wants to approach the witness.

SEN. HUFFMAN: I can? Okay. May I approach the witness briefly to show him a document?

SEN. DUNCAN: Yes.

SEN. HUFFMAN: Thank you, sir.

(Discussion off the record)

SEN. HUFFMAN: All right. If I may proceed? What I'd like you to clarify, there's been a lot of testimony, I guess, in the last 20 hours or so about money that was spent by the AG's Office in investigation of voter fraud cases. I want to make sure that the record is clear what the actual facts are. So if we could go through those, or if you have a summary of that and you want to give that to me for the record, we could do that and go through that
quickly.

MR. NICHOLS: I can.

SEN. HUFFMAN: Please do that.

MR. NICHOLS: It has -- it has been reported initially in the media and has been repeated by certain folks that the AG's Office spent 1.4 million on cases that the AG's Office has prosecuted under the election code. This information that apparently has been provided to members of this body is inaccurate. The confusion stems, I think, from the fact that there were references to the grant funding when the Special Investigations Unit of the Criminal Investigations Division was created. And people reached the conclusion that because it was funded through grant funding that all that money was used to prosecute and investigate election code cases, which is inaccurate.

As a matter of fact, if you go to the grant package that sought that funding, the grant package made it clear that that funding would be used to prosecute not just election code cases, but cases of public corruption, fugitive apprehension, child protection such as on-line solicitation and child pornography cases, as well as a host of other matters.

And so, in fact, if you crunch the
numbers and trace those grant funds, you'll find at the end of the day that with respect to the OAG's election code prosecutions, $93,579 of that grant funding can be traced to those prosecutions. And so it's just an example, in my mind, of how everyone, including members of this body through no fault of their own, need to be careful about information that's being provided to them about the OAG's enforcement efforts because sometimes that information can be less than accurate.

SEN. HUFFMAN: All right. Thank you, sir. One last question. There's also been some testimony about a depiction of a sickle cell anemia stamp that was shown I believe on a PowerPoint presentation that was presented perhaps from someone from the AG's Office at some point somewhere. Are you familiar with why a sickle cell anemia stamp was used in a presentation from the AG's Office? And explain that, please.

MR. NICHOLS: Yes, I am. That slide actually took evidence from an actual case. It was the Willie Ray case that you-all heard a little bit about today. And that stamp that was actual evidence from a criminal case was included on a slide that had as one of the bullet points the words "unique stamp."
The point of that PowerPoint that was produced was to try to educate law enforcement officers about ways they could investigate potential cases of election code violations. The point of including that evidence was to show that in a particular case, in the Willie Ray case, a key facet of that case was the use of the unique stamp. It didn't matter if it was a sickle cell stamp, a Lou Gehrig stamp, an Abraham Lincoln stamp, it wouldn't matter.

The point is that the fact that that stamp was used on a number of mail-in ballots allowed the investigators to go trace those ballots back to a single source, which of course is the charge that Willie Ray was ultimately charged with.

So first of all, I wasn't at the office at the time. In hindsight I can see how somebody would look at a PowerPoint like that, and frankly given the sensitivities involved, somebody might be offended by that, but it is important to understand exactly why that PowerPoint was put together.

SEN. HUFFMAN: All right. Thank you. Thank you very much, Mr. Nichols.

SEN. DUNCAN: Thank you, Senator.

Sen. Hegar?