APPENDIX

STANDING COMMITTEE REPORTS

Favorable reports have been filed by committees as follows:

March 30
Agriculture and Livestock - HB 681, HB 1908, HB 1918
Business and Industry - HB 257, HB 1209, HB 1382, HB 1819
Corrections - HB 609, HB 1688, HB 1711
Criminal Jurisprudence - HB 348, HB 493, HB 528, HB 549, HB 825, HB 958, HB 1282, HB 1372, HB 1506, HB 1644, HB 2058
Culture, Recreation, and Tourism - HB 1786, HB 2242
Higher Education - HB 602, HB 962
Human Services - HB 802
Insurance - HB 1290, HB 1759, HB 2064, HB 2449, HB 2752, HR 798
Land and Resource Management - HB 1213, HB 1445, HB 2387, HB 2906, HB 3202
Licensing and Administrative Procedures - HB 357, HB 358, HB 1084, HB 1406, HB 1484, HB 1505, HB 1974, HB 2104, HB 2238, HB 2310, HB 2509, HB 2594, HB 2763, HB 3113
Natural Resources - HB 2374, HB 2666
Public Education - HB 200, HB 2263
Public Health - HB 19, HB 594, HB 887, HB 1232, HB 1363, HB 1404, HB 1409, HB 1678, HB 1740, HB 1785, HB 1990, HB 2030, HB 2055, HB 2196, HB 2330, HB 2382, HB 2383, HCR 88
Transportation - HB 575, HB 1810
HOUSE OF REPRESENTATIVES
NOTICE OF PUBLIC HEARING

COMMITTEE: Elections

TIME & DATE: upon final adjourn./recess
Monday, April 06, 2009

PLACE: E2.028

CHAIR: Rep. Todd Smith

SB 362 Fraser et al.
Relating to requiring a voter to present proof of identification.

Testimony before the committee will be limited to invited witnesses.
CORRECTED MINUTES

On May 7, 2009, the House Committee on Elections authorized the correction of the minutes for the meeting of the House Committee on Elections held on April 6, 2009. The following are the corrected minutes for that meeting:

Pursuant to a notice posted on April 1, 2009, the House Committee on Elections met in a public hearing and was called to order by the chair, Representative Smith, Todd, at 1:30 p.m.

The roll was answered as follows:

Present: Representatives Smith, Todd; Pena; Allen; Anchia; Bohac; Bonnen; Brown, Betty; Heflin (8).

Absent: Representative Harper-Brown (1).

A quorum was present.

(Representative Harper-Brown now present.)

(Representative Pena in chair.)

SB 362

The chair laid out SB 362.

The chair recognized Representative Smith, Todd to explain the measure.

(Representative Smith, Todd back in chair.)

Testimony taken/registration recorded. (See attached witness list.)

(Representative Pena in chair.)

(Representative Smith, Todd back in chair.)

(Representative Pena in chair.)

The chair recognized Representative Smith, Todd to close on the measure.
The bill was left pending without objection.

(Representative Smith, Todd back in chair.)

At 1:18 a.m. on April 7, 2009, on the motion of the chair and without objection, the meeting was adjourned subject to the call of the chair.

__________________________
Rep. Smith, Todd, Chair

__________________________
Steven Schar, Clerk
THE HOUSE COMMITTEE ON ELECTIONS

81ST LEGISLATURE

APRIL 6, 2009
CHAIRMAN TODD SMITH: The House Committee on Elections is now called to order.

Will the clerk please call the roll.

THE CLERK: Representative Smith?

REPRESENTATIVE SMITH: Here.

THE CLERK: Representative Pena?

REPRESENTATIVE PENA: Here.

THE CLERK: Representative Allen?

REPRESENTATIVE ALLEN: Here.

THE CLERK: Representative Bohac?

REPRESENTATIVE BOHAC: Here.

THE CLERK: Representative Bonner?

(No Response.)

THE CLERK: Representative Harper-Brown?

(No Response.)

THE CLERK: Representative Helfin?

(No Response.)

THE CLERK: Representative Veasey?

REPRESENTATIVE VEASEY: Here.

CHAIRMAN TODD SMITH: Quorum being present, welcome, everybody here today that has come to hear a discussion on an issue that has been of great concern for our state and other states, as well.

I want to especially welcome 13 individuals who have agreed to come tonight and
provide their testimony and expertise from varying perspectives on the issue of Enhanced Voter Identification. Many of you have come from quite a long way. We appreciate you taking the time to be with us.

We're going to lay out the Senate Bill here in a moment, and at that point I'm going to hand the gavel to Vice-Chairman Pena for purposes of laying that piece of legislation out.

But before I do that, I'd like to make an opening statement, and for purposes primarily of the experts that are here with us, I want to give you some sense of the kind of questions that I'm interested in you answering.

So that to the extent that you have expertise in answering any of the questions that I have, you might be inclined to focus on those questions. But I also want to give any other member of the committee an opportunity to make an opening comment before we go to the witnesses.

It's my intent, we're starting at about 1:30. And just so that everybody understands how we are we're going to proceed, once we lay the bill out and begin recognizing expert witnesses, it is my intent, we have witnesses representing both
perspectives. Not that there are only two perspectives, but certainly a diverse group of witnesses to provide us with every conceivable perspective on this issue.

And it is my intent, as much as possible, to recognize witnesses that are for, followed by witnesses that are against, followed by witnesses that are for, followed by witnesses that are against until we accommodate all of the experts who are with us today.

Otherwise we wouldn't limit the length of testimony, but because we're going to be doing this again with the members of the public tomorrow, and because that has the potential to last well into the night. We have a number a variety of ages on our committee, and I don't want to kill anybody.

So I am determined that we get out of here tonight by midnight so that people can have a reasonable amount of sleep before we accommodate the public tomorrow and take their testimony until they run out of steam.

UNIDENTIFIED SPEAKER: Do we have to go till midnight?

CHAIRMAN TODD SMITH: No. We don't have to go till midnight, and I'm about to tell you how I...
plan to accommodate the witnesses.

It's my intent and there will be a little device over there, Steven. We've got a device, and what this is going to do, I'm going to allow every witness to give a ten-minute, uninterrupted comment so that you can say whatever you wish to the committee and whatever is on your mind and be uninterrupted in doing so.

I believe that is set to go off so that you have a 1 and 1/2-minute warning. When you see a yellow light, that means you've got a minute and a half before the ten minutes are up. And at the end of the ten minutes, Steven is going to let me know that the ten minutes are up because I can't see the light.

At which point we will begin a period of up to 30 minutes' of questions on the part of the panel. And then, obviously, this is, unusual, members in that we're not usually limited in the amount of time that we have to ask the questions that are on our mind.

And in light of the fact that today we're operating in a different manner, I would just ask that all of you be respectful that there are nine members on the committee, and I presume everybody will not have an opportunity in asking a question or two.
I'm going to do my best in recognizing, members to make sure questions from both sides of the political aisle are given equal opportunity. That is generally, how we will proceed.

Yes, Representative Anchia.

REPRESENTATIVE ANCHIA: I have a couple of questions, Mr. Chairman.

Have you given some thought to the order that we're going to take witness in? Is it going to be, namely, people who have flights? Is that going to be the procedure?

CHAIRMAN TODD SMITH: Again, anybody who has flight arrangements that are peculiar or require us to put you toward the front of the agenda, please make my staff aware of them and we will do our best to accommodate that within the constraints of wanting to put witnesses both for and against this piece of legislation.

I'll be glad to accommodate those witnesses who have time deadlines within the constraints of recognizing both sides both early in testimony and as we proceed through the evening. I think there's even on the most, what is received to be the most decisive of issues, I think there are more surprisingly enough that unites us in principal than
I think I can speak with certainty that every member of this committee agrees that we should do all that we reasonably can do to prevent all types of voter fraud. I think everybody on this committee believes that we should do all we that we can do to insure that any legal voter may vote.

I think everybody on this committee agrees that it is equally unacceptable when a legal vote does not count. Whether that vote occurs due to an unreasonable barrier to voting or due to an offsetting fraudulent vote.

And what we're looking for here tonight from the experts that have been asked to testify for ideas on how we might enhance the security of our elections while simultaneously expanding access to the polls.

There are a number of questions that I specifically am interested in hearing from the expert witnesses on, and again my co-panelists may have other questions they would like to emphasize for you to address, as well.

No. One on my list is the extent of the evidence of voter impersonation in Texas or nationally.
No. Two: Is such evidence the tip of the fraud iceberg or is it the entire iceberg?

Three: If most voter fraud occurs through absentee ballots, what could or should be done about that?

Four: Any reliable evidence that the Texas Senate version, and I'm going to lay that out in a minute and take a moment to read so that all of our witnesses are familiar to the extent that you're not, and all our panelists and my colleagues are familiar with the details of that legislation.

But I'm interested in any reliable evidence that the Texas Senate version of Voter ID would either enhance or suppress voter turnouts.

Five: To what extent would you expect the Texas Senate version, again, of Voter ID to defer voter fraud.

Six: What is the best way to handle provisional ballots cast due to an inadequate ID? How might we best ensure that a legal voter who casts a provisional ballot will have their vote counted?

Seven: And this will be a fairly narrow group of people, I presume, that would be able to address this, but I'm interested in how many voters can I register per million dollars spent?
Those are the seven questions that I mark out that I am particularly interested in hearing from you about. And at this time I will recognize anyone on the panel who wishes to be recognized for purposes of making any opening comments.

At this time the chair shows representative Linda Harper-Brown to be present, and I recognize Representative Anchia to make opening comments.

REPRESENTATIVE ANCHIA: Thank you, Mr. Chairman and members of the committee and members of the public and the expert witnesses that are here today. We appreciate everyone's participation in this very important set of hearings.

We're going to be meeting today with expert testimony and then tomorrow we will have the public experts join us for additional hearings.

And I want to say it is my view that this is an important exercise and an important part of democracy. And I want to thank you everyone, especially those who came in from out of town who are not from Texas and are willing to come here to help inform us as we develop our public policy.

The focus of this hearing today will be the Fraser Bill, the bill that was passed on a
partisan basis out of the Senate and is coming out of the House.

And it is interesting to note that it is a Voter Identification bill that seeks to remedy the alleged problem or type of voter fraud in Texas that would be voter impersonation.

I've been on this committee for three sessions now. In 2005 we took testimony on this. In 2006 we studied it during the interim. 2007, during my second session I was on the committee. 2008, we studied it during the interim. And now we're going to take testimony in 2009.

And to date, even with an ongoing investigation into voter fraud, generally, by the Attorney General of the State of Texas, we have found no documented cases of in-person, at the polls, voter impersonation.

So I ask frequently: What is this bill about? And some might argue it is to deal with potential for fraud. But I also note that what we have seen in the studies that we've undertaken is that the fraud that does exist on behalf of voters have been on mail-in ballots, which are wholly exempted from the bills that we heard in 2005, 2007 and now that we're hearing in 2009.
And what I really would like this committee to focus on and have members of the public think about is the big beast in the room, and that is the low participation rates in Texas. Texas is consistently in the lowest quintile of participation in the country. This has not changed.

During the last few election cycles it is clear that we have structural impediments to voting in this state because people are not participating. Even with the very highly contested Presidential Election during the last election cycle, it was barely over half of our registered voters statewide that participated in the election.

And I don't think that's good for Texas. I don't think it's good for our democracy. And if the members of the committee want to engage on that issue, what are we doing wrong now? How can we increase security in the system, but at the same time in the spirit of Carter-Ford and then later Carter-Baker, have additional access to the franchise so that we are no longer last or next-to-last or near last in the country in terms of voter participation.

And if the members of the committee and members of the public and members of the expert witness want to work on this, then I think we can have
a very big discussion.

But that's the big beast in the room: Is Texas satisfied with the lack of participation in the state and being either last or near last in voter participation and turn-out year after year after year and election cycle after election cycle after election cycle?

So members of the committee, I offer to you my skills or lack thereof as a legislator in trying to come up with a system that increases access to the franchise, and at the same time, provides greater security.

Because I worry that the outcome of the Fraser Bill, if passed by the House, who have negative effects on access to that franchise and would disenfranchise hundreds of thousands of Texans, and I think that's a bad result.

So I look forward to working with all of you in achieving a good result.

And may I say to the audience and to the members of the media that I'm extremely appreciative of the Chairman's approach to these hearings. He has been certainly a good listener and a gentleman as part of this process, and I thank you, and I appreciate your being inclusive as part of this process.
I've had for two sessions and had voter suppression bills crammed down our throat, and I think if we are willing to be bipartisan, I think we can get something done that all Texans can be proud of.

CHAIRMAN TODD SMITH: Thank you, Representative Anchia.

Representative Brown.

REPRESENTATIVE BROWN: It won't take me long, Mr. Chairman.

I just want to also welcome those who have come here to help us by providing their expert testimony on both sides of the issue.

And rather than taking your time, I will not argue my case at this point. I think we will have plenty of time to do that later.

I just want to quote the Senator who passed this in the Senate. I think that he summed it up so beautifully when he said, what we're here about, we want to make it easy to vote but hard to cheat and that's all we're trying to do. Very easy to vote but hard to cheat. Thank you.

CHAIRMAN TODD SMITH: Any other member who wishes to make any opening comments before we lay out this bill and begin expert testimony?

Sure. Representative Veasey.
REPRESENTATIVE VEASEY: Mr. Chairman,

thank you very much for letting me sit in. I'm not on
the committee but this is an issue that is near and
dear to me.

I think it's sad that just not too long
ago Dr. King and the civil rights marchers of the
1960s and before that gave their lives, marched,
threatened and had barriers put in front of them. And
it seems to me that this is what this bill is really
all about.

I think my good friend from Dallas,
Representative Anchia, pointed out so eloquently, that
ever since the beginning of our freshman year we've
been debating this bill. Not once has there been any
shred of voter impersonation that has been brought
before the House. Not once.

And I've had a member, a very conservative
member, come up to me on the House Floor, and say,
"Mark, this is not going to hurt you. Why are you
concerned about this? This is only going to hurt
white democrats."

And I understand the point of the bill,
that you can shave enough of the minority vote, the
black and brown vote, because this is a racial issue.

Make no mistake about it. Don't go home
tonight thinking that this is about voter
impersonation or it's about Voter ID. It's about
skimming enough minorities, people that have a hard
time being able to access documents. People that
have a hard time being able to exercise their right to
vote. People that don't have access to
transportation, like many of us are blessed to have.

This is about skimming enough votes so
some people can't get elected. And we've had members
in this body that were elected or narrowly defeated by
just a few votes. We have members that are here
today. And it is inherently unfair.

I mean, I've looked at this bill. I mean,
I go into everything with an open mind. But I have
seen nothing after the three years, after three
sessions that we've been working on this, no one's
presented anything to show that there's voter
impersonation going on at polls.

And so I think with that, I understand
that people feel passionate about this on both sides
of the issue. But I think in order to be honest with
yourself and sleep at night, that you have to say and
ask yourself the question: Is this right, despite the
fact that no one has proved that anybody is doing
anything wrong? Is it right?
Can you live with your conscious knowing that not just -- and I know Representative Anchia did a good job of just saying that it's Texans that would be disenfranchised, but a lot of the Texans, let's be honest, are going to be black and brown and poor folks.

Can you really sleep with yourself at night knowing that if this bill passed, that most of the people that would be denied the right to vote are going to be black, brown and poor?

Can you live with yourself knowing that most of the people that would be denied the right to vote are the same people, and they look like the same people 30, 40 years ago, with Dr. King that were denied the right to vote?

It's, basically, the same group of people that have barriers put in front of them but it's just a different time and a different generation.

And one of the things that I do like about the conservative movement is that they say we should never pass bills and that we should never pass laws or make government interfere in people's lives when there's no need for a law.

That you should only pass laws when there are just these overwhelming instances to where
government needs to take action to get involved in people's lives.

And so now you have conservatives that are pushing this bill, that are looking forward to this bill, and nothing has been presented to them to show that government should add this extra barrier, should put this extra burden on here for minorities to be able to vote.

We're just doing it just because we want to see what's going to happen and see if enough votes can be skimmed in order to make it a difference in a tight race.

And to the person that said to me: This is not going to hurt you because you're in a safe, black district -- well, guess what? Maybe like Barrack Obama, maybe I'll want to do something else one day. Maybe I'll want to run in a district to where it will be a close race and I can't rely just on all black votes.

Maybe the handful of black voters in our districts that will be denied the right to vote, even though I'm still going to win.

But that person that moves from apartment to apartment, that moves from their grandparents' house to a different apartment -- maybe those handful
of people in our district, even though I'm still going
to win -- I think it's still incumbent or me to look
out for their interests.

And that's why I'm up here today. And,
Mr. Chairman, I thank you for allowing me to sit in on
the committee.

CHAIRMAN TODD SMITH: Thank you,
Representative Veasey.

Anybody else here that wishes to make any
opening comments?

I think we've heard in these opening
comments people's sincere concerns about the concept
and notion on the one hand of voter fraud, and on the
other hand about voter suppression.

I think they're all sincere concerns, and
what this hearing, I hope, is going to be about is to
lay out before the entire committee so that there is a
deep understanding on everybody's part about the
extent to which the evidence supports those concerns.

I want to know everything there is to know
about the state of the evidence that would suggest
that a change in policy in the State of Texas from
requiring everyone to have some form of
identification, either a photo ID or non-photo ID, to
a policy that simply says: If you do not have a photo
ID, instead of providing one form of photo ID, you provide two forms of photo ID.

I'm very interested in hearing what the actual evidence is that that change would have a material impact on any legal voter's ability to vote.

And we are also interested in looking fully and completely at the evidence of fraud and at the extent to which it occurs and what we can do about it.

We are going to focus on both of those goals. And it's my intent not to make any presumptions at all about what the evidence will show us but to listen to the best experts in the field and then make reasonable and rational conclusions based upon that evidence at the end of the day.

Representative Anchia.

REPRESENTATIVE ANCHIA: Just a question, Mr. Chairman: How are we going to handle resource witnesses? Which ones have we invited and which ones are available to testify? For example: Attorney General? Secretary of State? DPS?

CHAIRMAN TODD SMITH: I think they're all here, and it was my expectation that you would want to hear from all of them.

And so, roughly, I don't know that I
calculated for the length of the opening statements, but it was my intent to roughly finish the expert testimony around 11:00. Recognizing that things don't always go like you want them to.

I figured that by the time we heard from the resource witnesses, that we would be able to get out of hear by midnight.

REPRESENTATIVE ANCHIA: Would it be appropriate, just as to the state of the law, to have them come up just intermittently and briefly to answer a specific question that we might not be clear on?

CHAIRMAN TODD SMITH: Absolutely. My preference would be if you would, that that occur outside or just after the 40 minutes. Just make note of your questions of those witnesses.

And before we bring the next witness up, we will have the opportunity to bring the resource witnesses up.

REPRESENTATIVE ANCHIA: Thank you, Mr. Chairman.

CHAIRMAN TODD SMITH: Okay. All right. At this time, the chair will hand the gavel to vice chair Pena.

VICE-CHAIRMAN PENA: The chair now lays out SB 362 by Fraser, and calls on representative
Chairman Todd Smith: Okay. I want to take a few minutes, members and testifiers, to explain this bill in case there's anyone out there, either here or there, that has not had the opportunity to fully understand.

This is not the Indiana law. I know we've got people here from Indiana, but we're interested in hearing from everybody, again, about the difference between this bill and our current law, and what the evidence would suggest the impact of that would be, both on the side of the deterring fraud and on the side of discouraging any legal voter.

Senate Bill 362. Senate Bill amends the Election Code to require the voter registrar of each county to provide notice of the voting requirements for voting prescribed by provisions relating to the acceptance of a voter for voting and a detailed description of those requirements with each Voter Registration Certificate or Renewal Registration Certificate issued.

The bill requires the Secretary of States to prescribe the wording of the notice to be provided on the certificate. The bill makes these provisions effective September 1, 2009. So anybody who registers
to vote or renews their registration would receive by
mail this information notifying them of the changes in
the law.

Senate Bill 362 requires the Secretary of
State and the Voter Registrar of each county that
maintains a website to provide notice of the
certification requirements for voting on each entity's
respective website and requires the Secretary of State
to prescribe the wording of that notice.

The bill requires the Secretary of State,
in cooperation with the voter reporting organizations
as determined by the Secretary of State and with each
party who's nominated for governor or in most recent
general election receive 20 percent or more in the
total number of votes, which would be Republicans and
Democrats received by all candidates on Governor on
elections to establish a statewide effort and educate
voters regarding the identification requirements for
voting.

The bill also authorizes the Secretary of
State to use any available funds, including federal
funds, to implement these provisions. The bill makes
these provisions effective September 1, 2009.

Senate Bill 362 requires the training
standards for election judges adopted by the Secretary
of State to include provisions on the acceptance and handling of the identification presented by a voter to an election officer in accordance with the regular procedure of accepting a voter and requires each election clerk to complete that part of the training program. The bill makes these provisions effective September 1, 2009.

Senate Bill 362 requires the presiding judge of an election precinct to post notice with a list of the acceptable forms of photographic and non-photographic identification in a prominent place on the outside of each polling location, and requires that information to be printed using a font that is, at least, 24 points.

Senate Bill 362 requires a voter on offering to vote to present to an election officer at the polling place either one acceptable form of photo identification or two acceptable forms of non-photographic identification, rather than the voter's Voter Registration Certificates.

It includes, just to be clear -- the Voter Registration Certificates is one of the two forms of forms that is acceptable. So most people vote already with photo identification. The minority of people currently who simply lay down a Voter Registration
The only change in this bill from current law is that those people, in addition to laying the Voter Registration Card on the table, would also have to supplement back that Voter Registration Card, back that up with an additional document on the list of non-photo identification that is available, such as an envelope from a governmental agency.

Any of those items, if not all of them, are already on the list of non-photographic identification that is acceptable at the polls.

The bill makes conforming changes to provisions relating to a voter's statement of residence. A voter with the correct certificate who is not on the precinct list of registered voters, a voter who is not on the certificate who is on not the precinct list of registered voters and the regular procedures for accepting voters.

Senate Bill 362 specifies that the following documentation is an acceptable form of photographic identification for voting: A driver's license or personal identification card issued to the person by the Department of Public Safety that is not expired or that expired no earlier than two years before the date of presentation.
The United States Military Identification Card that contains the person's photograph.

A United States Citizenship Certificate issued to the person that contains the person's photograph.

A United States Passport issued to the person.

A License to Carry a Concealed Handgun issued to the person by the DPS or a valid identification card that contains the person's photograph and is issued by an agency or institution of the federal government or of an agency, institution or political subdivision of Texas, such as -- well, that may be on the next paragraph.

Any identification card with a photograph.

Senate Bill 362 adds the following documentation as acceptable non-photographic proof of identification for voting:

One, the voter's Registration Certificate.

Next, an original or certified copy of the person's marriage license or Divorce Decree.

Next, court records of the person's adoption, name change or sex change.

Next, identification card issued to the person by governmental entity of Texas or the United States.
States for the purpose of obtaining public benefits, including veterans' benefits, Medicaid or Medicare.

Next, a Temporary Driving Permit issued to the person by DPS.

Next, a pilot's license issued to the person by the Federal Aviation Administration or another authorized agency of the United States.

Next, a library card that contains the person's name, issued to the person by a public library located in the state.

Or next, a hunting or a fishing license issued to the person by the Parks & Wildlife Department.

Senate Bill 362 removes the following documentation as acceptable proof of identification for voting: A document similar to a driver's license or personal identification card issued to the person by an agency of another state, regardless of whether the license or card has expired.

A non-specified form of identification containing the person's photograph that establishes the person's identity or any other form of identification prescribed by the Secretary of State.

Senate Bill 362 authorizes a voter, if the identification requirements are not met, to be
accepted for provisional voting, only under the
provisions relating to the acceptance of an Affidavit
to cast a provisional ballot.

The bill requires an election officer to
inform a voter that is not accepted for voting because
of failing to present the required identification of
the voter's right to cast the provisional ballot under
those provisions.

Senate Bill 362 amends the Transportation
Code prohibit DPS from collecting a fee for a person's
identification certificate issued to a person who
states that the person is obtaining the personal
identification certificate for the sole purpose of
satisfying requirements for a photographic
identification for voting who is a registered voter in
Texas and presents a valid, Voter Registration
Certificate or who is eligible for voter registration
and submits a Voter Registration Application to the
department.

So the way I read that, you go to your DPS
officer, present your Voter Registration Certificate,
you get a free photo identification.

So the question is: The difficulty in
accessing the DPS facilities that are currently in
place across the state.
Senate Bill 362 requires the Secretary of State, as soon as practicable on or after September 1, 2009, to adopt the training standards and develop the training materials required to implement the bill's provisions related to training.

The bill requires the County Clerk of each county, as soon as practical on or after September 1, 2009, to provide a session of training using the standards adopted and materials developed by the Secretary of State.

Members, do we have any questions for this?

Representative Anchia.

REPRESENTATIVE ANCHIA: Yes, Mr. Chairman, who's the House sponsor of this bill?

CHAIRMAN TODD SMITH: I presume I will be, but that decision has not been made yet.

Representative Anchia?

REPRESENTATIVE ANCHIA: If we have questions about the specific provisions in the bill, who should we direct those questions to?

CHAIRMAN TODD SMITH: Since we don't have a House sponsor and we don't have the author here --

REPRESENTATIVE ANCHIA: I have a lot of questions on the mechanics of the bill, and I'm just
trying to think who's the best person to address those questions to?

CHAIRMAN TODD SMITH: I presume I'm the best person to answer those and maybe our staff can see if they can find someone.

Travis, are you listening?

See if someone's available to answer any questions that I can't answer on the technical aspects of the bill.

REPRESENTATIVE ANCHIA: And final, Mr. Chairman, I did notice that there is a new fiscal note that is different than the fiscal note that is in the Senate. I believe the fiscal note in the Senate was 0. The new fiscal note is $2 million.

I'm curious as to the methodology of LBB. How they came up with such a radically different outcome three weeks later and what they believe the $2 million is tied to.

I mean, I don't know. Will we have someone from LBB here to answer those questions?

CHAIRMAN TODD SMITH: I don't believe we have a resource witness from LBB but I'll be glad to.

REPRESENTATIVE ANCHIA: I think it's fairly self-explanatory in terms of the manner in which they determined that there want a fiscal note.
For example, one of the provisions to require the Secretary of State or require the local voter registrar provide a written explanation in the changes of the law every time someone registers or renews their Voter Registration Certificate.

Is that a new provision to the bill? I'm curious as to why in the Senate that the fiscal note was 0, and then just three weeks later we have a $2 million fiscal note.

What methodology was used? What sort of deliverables they believe they need to be provided?

CHAIRMAN TODD SMITH: My suggestion on that, Representative Anchia, is that we invite -- please make a note of this -- those people to attend our hearing tomorrow night so they would have an opportunity to make a comment and to answer my questions you might have.

Does that work?

REPRESENTATIVE ANCHIA: Okay. Thank you. Thank you, Mr. Chairman.

CHAIRMAN TODD SMITH: Are there any other questions?

REPRESENTATIVE ALLEN: Yes, I have one question.

CHAIRMAN TODD SMITH: Representative
Allen.

REPRESENTATIVE ALLEN: Yes. One question. Are you saying to me if I showed up to register, I need my Voter Registration Book?

CHAIRMAN TODD SMITH: No.

REPRESENTATIVE ALLEN: If I show up with just my Voter Registration, I'm okay?

CHAIRMAN TODD SMITH: If you show up to register, you said? I don't believe there's any changes in the registration procedures.

REPRESENTATIVE ALLEN: To vote?

CHAIRMAN TODD SMITH: Yes. In this piece of legislation, currently, let's make it clear as that can be: Currently there is a list of documents, photographic identification and a list of non-photographic identification.

REPRESENTATIVE ALLEN: I got that list. I got that.

CHAIRMAN TODD SMITH: Since the late 1990s you have to have a document in order to vote.

REPRESENTATIVE ALLEN: Correct.

CHAIRMAN TODD SMITH: You have to have the identification. That is already the law.

REPRESENTATIVE ALLEN: I got that already.

CHAIRMAN TODD SMITH: If you don't, you
cast a provisional ballot, which in most instances, does not count, I understand.

REPRESENTATIVE ALLEN: Okay. What I'm trying to see is I must have my Voter Registration Form?

CHAIRMAN TODD SMITH: My understanding of the Senate legislation is you have to have two forms of non-photographic identification on the list. A Voter Registration Certificate is one acceptable form.

REPRESENTATIVE ALLEN: Okay.

CHAIRMAN TODD SMITH: It is not a mandatory form. It is not one of the two that must be shown.

REPRESENTATIVE ALLEN: Okay. So I can have two others?

CHAIRMAN TODD SMITH: You can have two others. That's my understanding.

REPRESENTATIVE ALLEN: I'm just trying to get it to the point -- to the bottom of -- if I lose my Voter Registration and that's with that, and I still just need two other forms of I.D.?

CHAIRMAN TODD SMITH: That's my understanding.

REPRESENTATIVE ALLEN: All right.

CHAIRMAN TODD SMITH: If I'm wrong, we'll
correct that tomorrow.

    REPRESENTATIVE ALLEN: All right.

    CHAIRMAN TODD SMITH: Representative Heflin.

    REPRESENTATIVE HEFLIN: Just so I'm clear: The new fiscal note here is saying the DPS is forwarding the existing cost of using -- that the DPS would absorb that cost?

    CHAIRMAN TODD SMITH: Yes. Obviously, the overwhelming majority of Texans already have the photographic documentation that is required of this legislation.

    We're talking about, you know, the testimony today to identify this. But my understanding is that the percentage of Texans, the voting-age Texans who do not have the photographic identification that is not required but allowed under this bill is something less than five percent of voting age population.

    That percentage of people, whichever ones of them presented themselves at a DPS station and said, I wish to have a photographic identification free of charge that I intend to use for purposes of voting, would be given a photographic identification free of charge at their local DPS station. That's my
understanding of how that works.

The reason that there is not a fiscal note there is because it is an additional burden on DPS and could easily be handled within available revenues when you consider what a small percentage of the population would be in that category.

And the fact that some of the people that are in that category might be using it for purposes other than simply voting.

REPRESENTATIVE HEFLIN: So a concern I have is that LBB has said the Secretary of State is to provide $2 million for this education. It also says that local government impact, but it doesn't say how much that's going to cost local government's.

Who's going to pay for all this additional training and who's going to pay for all this additional signage? And who's going to pay for all the extra staff needed to implement this?

CHAIRMAN TODD SMITH: Well, I think we will have LBB here tomorrow, and to the extent that they have deemed -- it is free for local government.

REPRESENTATIVE BROWN: Fiscal impact would vary from county to county. Costs would include the amendment both for printing signs to post at each polling place, which would not be significant.
Other potential costs would be associated with additional training and posting information to the county websites. Again, those costs are not expected to be significant. People are already trained. This is simply training that would occur at the same time training already occurs.

One smaller county response anticipates that the new provisions regarding casting and provisional ballots would require hiring additional staff, resulting in a moderate to significant cost.

REPRESENTATIVE HEFLIN: But you agree that it's going to take more time and money to train these people to be able to identify 16 different forms to verify that they're legitimate?

REPRESENTATIVE TODD SMITH: Well, you know, I just want to emphasize again that they're already doing that.

We already have a list of photographic and non-photographic identification that is acceptable at the polls. You have to do that now. I presume these people are already trained on what is acceptable and what is not acceptable.

We're simply taking these two lists -- there are some small changes on the list, but we're taking the two lists that already exists or the Senate
Bill does and instead of saying you've gotta have one off of the other, we're saying if you choose this list that does not include photographic identification, then you need to back up your Voter Registration Card or whatever document you place on the table with an additional non-photographic identification ever so much.

So my presumption is that the training or the extent of the training would be very similar and will be different than current training but should be no more burdensome than existing training in terms of the impact on local governments.

Representative Brown and then Representative Anchia.

And let me just say, members that want to go to bed at midnight, that at some point we're going to need to get to the witnesses but we're going to be in trouble.

REPRESENTATIVE BROWN: Let me say one question: You used the five-percent figure for those who do not have photo ID.

How do the people who vote by mail, those who vote from a nursing home that is provided in here, the 70 and so on -- have those been subtracted in order to come up with the five percent number?
CHAIRMAN TODD SMITH: That's why I qualified that number with we're going to hear expert testimony tonight that will help us identify what that is.

REPRESENTATIVE BROWN: Okay. Okay.

CHAIRMAN TODD SMITH: My general intent with throwing that number out there was just to present the suggestion that the overwhelming majority of voting-age people already have photographic identification.

There is a small minority of people who do not. They are the minority that have the constitutional right to vote.

And I know every member on this committee takes very serious the fact that even those who do not have photographic identification, do have a constitutional right to vote.

And simply because they're a minority, does not mean that we don't take that right seriously and any legislation that comes out of this committee is going to take that right seriously.

And so I was not intending to establish as a matter of fact the percentage, but to simply relay a general sense on my part that you're talking about a small minority of legal age voters. We'll let these
people tell us what percentage.

I'll defer to Dr. Alan.

CHAIRMAN TODD SMITH: Okay.

REPRESENTATIVE ALLEN: I wanted to ask a

question about the DPS reference you made, chair.

You said you could get your voting ID at
the DPS. You said just show up at the DPS office and
you could get your I.D. free.

CHAIRMAN TODD SMITH: Yes, ma'am.

REPRESENTATIVE ALLEN: Show up is a

question I have. Show up. I've got to go there.

CHAIRMAN TODD SMITH: To get a picture
taken.

REPRESENTATIVE ALLEN: To get a picture
taken and there are a lot of people who would not be
in a position to show up at the office.

The other thing I thought I heard you say
was that you could only use this I.D. for voting.

So if I showed up, if I was able to show
up and I had this piece of ID in my person and I
wanted to use it for something else, I'd be doing what?

CHAIRMAN TODD SMITH: No. You can't use
it for voting.

REPRESENTATIVE ALLEN: No. I want to use
it for something else. I can only use it for voting?
Is that what you meant?

CHAIRMAN TODD SMITH: Well, I think that's the way the Senate Bill is written. That it is free for purposes -- let's see if we can find that in terms of the free provision, in terms of how it's written.

REPRESENTATIVE BROWN: It's my understanding, that in order to get the free I.D., it has to be for the purposes of voting.

However, after you possess that, there's no provision that says you can't use it for other things. That's my understanding.

CHAIRMAN TODD SMITH: That's a good point.

And what the language says is, "The department may not collect the fee for a Personal Identification Certificate for the person who states that the person is obtaining the Personal Identification Certificate for the sole purpose of obtaining Section 63.1-B of the Election Code. And who is registered to vote in states and present a valid Voter Registration Certificate."

REPRESENTATIVE ALLEN: But I'm concerned that after I get it, I want to make sure that this is not in the bill.

That after I get it, I voted. Now, I go and maybe I need to go and cash a check or do...
something else or the police stop me and I need some I.D.

I cannot use that for ID purposes?

CHAIRMAN TODD SMITH: To the extent that that's not clear in the legislation, I would agree that we should make it clear.

REPRESENTATIVE ALLEN: At some point, I think we'll have another law.

CHAIRMAN TODD SMITH: Sure. I think that needs to be clear.

REPRESENTATIVE ANCHIA: Mr. Chairman.

CHAIRMAN TODD SMITH: Representative Anchia.

REPRESENTATIVE ANCHIA: Mr. Chairman, just one more question about the bill: The bill that is before us today is the Fraser Senate Bill.

CHAIRMAN TODD SMITH: That's correct.

REPRESENTATIVE ANCHIA: Tomorrow, we will have the Brown Bill, the Heflin Bill, the Bonnen Bill and the Fraser Bill, correct?

CHAIRMAN TODD SMITH: And we also suspended the rules on the House Floor so that we would have a couple of Dunham Bills and we would also have a Chuck Hopson Bill.

REPRESENTATIVE ANCHIA: Okay.
CHAIRMAN TODD SMITH: We will be dealing in some manner with this general issue?

REPRESENTATIVE ANCHIA: Do any of them have committee substitutes? Because we created a rule that we were going to be able to review committee substitutes with some advanced warning.

CHAIRMAN TODD SMITH: You know, I don't know.

REPRESENTATIVE ANCHIA: Okay. But is that something that we should discuss as a committee before we take up and consider those bills?

CHAIRMAN TODD SMITH: Yeah. We could do that. If anybody feels like any of that is a surprise, then we can certainly accommodate those concerns.

REPRESENTATIVE ANCHIA: So I just want to be clear: That the Fraser Bill that was discussed earlier, that the Fraser Bill has an exemption for people that are 70 years old and that is not the Fraser Bill, that is the Brown Bill, correct?

CHAIRMAN TODD SMITH: That's correct.

REPRESENTATIVE ANCHIA: And the Brown Bill is not before us, correct?

CHAIRMAN TODD SMITH: That's correct. I don't want to speak for Betty in terms of what is in...
her bill, but I believe that is in her bill.

REPRESENTATIVE ANCHIA: I think, yeah.

The question arose, and the inference was made that it was in this bill. And I don't believe that. I believe it is in one of the bills we're going to hear tomorrow.

CHAIRMAN TODD SMITH: Okay.

REPRESENTATIVE ANCHIA: The second issue related to poll-worker training. I want to make sure we're talking apples to apples, Mr. Chairman.

You said you didn't think there would be any significant increase in training. We are adding a substantial, additional number of documents, and we are moving from a presentment standard to an identity standard. In other words, there has to be a visual confirmation of identity under the Fraser Bill.

So that is a significantly different standard. And we did hear testimony from the Department of Public Safety during the interim that there is a special training associated with that.

So I don't want anybody in the media or the audience to leave thinking this is an apples to apples training.

CHAIRMAN TODD SMITH: Yeah. I think you're right about that, Representative Anchia. And
for whatever it's worth, I publicly signaled my displeasure with that particular provision.

And to the extent that it is removed in the House version would eliminate any -- I think it would create a bill where the additional -- the additional costs of the counties is more in line with what I've just described.

But I think you're right, that in the Senate version, somebody would have to be trained on, as I understand it correctly, when you like yourself, for your vote to count.

REPRESENTATIVE ANCHIA: Mr. Chairman, I appreciate your signal, and I just want to make sure we talk about the Fraser Bill today. So thank you. Thank you for that clarification.

CHAIRMAN TODD SMITH: Representative Bohac.

REPRESENTATIVE BOHAC: Mr. Chairman, I just wanted to just briefly address Dr. Allen's comments a moment ago.

It's in Section 12 of the bill, and the DPS usually issues an official ID card or Texas driver's license. And this would be an ID card that could be used for any other purposes for which an ID card could be used for. So I think that would address
your concern and it's in Section 12.

REPRESENTATIVE BROWN: Thank you.
REPRESENTATIVE BOHAC: And it's in Section 12.

REPRESENTATIVE BROWN: Thank you.
CHAIRMAN TODD SMITH: Any other questions?
REPRESENTATIVE VEASEY: Yes, sir.
CHAIRMAN TODD SMITH: Representative Veasey.

REPRESENTATIVE VEASEY: Just looking through the bill, I didn't see anything in there about being able to use your utility bill.

Is there somewhere in the bill that addresses being able to use your utility bill?

CHAIRMAN TODD SMITH: I don't believe it indicated that that was eliminated from the list.

Yes, Representative Veasey, if you look at the bottom of Page 6, it's current law and it states it in this language.

REPRESENTATIVE VEASEY: Okay.

CHAIRMAN TODD SMITH: "Registration card, current utility bill, bank statement. Government check, paycheck or other government document that shows the name and address of the voter."

REPRESENTATIVE VEASEY: Okay. Thank you.
CHAIRMAN TODD SMITH: Okay.

Any other questions before we move on to witnesses?

Okay. Can I take it back?

Thank you.

Chairman Pena.

At this time, we will begin with our testimony. Remember the rules from a time standpoint. You'll have the clock down here, which will begin as soon as you begin speaking.

At this time the chair recognizes Todd Rokita, the Secretary of State of Indiana. Representative and voters and tax payers in the state of Indiana who wish to testify in favor for or against Senate Bill 362, welcome.

TODD ROKITA: Thank you, Mr. Chairman.

Mr. Chairman, may I begin?

CHAIRMAN TODD SMITH: You may.

TODD ROKITA: Thank you, sir.

Greetings from the people of the state of Indiana. It's an absolute honor to be before colleagues and distinguished leaders of what many of us consider a very great state.

Every time I come into the state, which I can't say is often enough, I'm reminded of the spirit
of the people of Texas. Its history of independence and what a leader for the country this jurisdiction is. So it is truly an honor to be back.

In that vain, I'd like to discuss and answer the questions that you pose.

The experience in Indiana --

CHAIRMAN TODD SMITH: Secretary Rokita, you may have started without stating your name and who you represent. Would you please just do that for these purposes.

TODD ROKITA: You just did when you introduced me.

CHAIRMAN TODD SMITH: There are some people who believe if you don't do it, it may create a problem with the transcript.

TODD ROKITA: Okay. I'm Todd Rokita of the aforementioned person. I'm the Secretary of State of Indiana.

CHAIRMAN TODD SMITH: Thank you.

TODD ROKITA: And we do have a Photo ID law without exception.

But I am not here, as I was getting ready to say at all, to presume to tell you fellow leaders what ought to be in the state of Texas. We believe too much in state's rights like you do to do something
like that.

I am here, and in looking at your
biography, see that we have a good deal of lawyers on
the committee, as am I.

Please consider me a fact witness. So I'm
to answer questions about how things went in Indiana.
Not to ignore, Mr. Chairman, your request to try to
extending what is Texas law and what this bill does.

As I go through my testimony, which I
don't expect to take all of ten minutes, hopefully
some of yours questions will be answered and I'm happy
to answer them directly afterwards.

This year the country and especially
Indiana, because we grew the man from the year 7 to
21, we celebrate the 200th anniversary of Abraham
Lincoln's birthday.

Yet in many parts of the country, and
until recently in Indiana, we were electing our
leaders as if Abraham Lincoln was still on the ballot.
In fact, he's the one that helped invent the precinct
structure, and we used signatures on written poll
books back then we used on the ballot because that was
the best technology we had.

We have seen more election reform in the
last eight years or so than we have seen since the

And we that sentence, I just said a mouthful. We need to start voting how we live in the 21st century. And with all the accessibility that we have introduced into the process, Mr. Chair, since the amendments to the United States Constitution, up to the federal statutory changes that led to the Voters' Rights Act in 1965, to the whole slew of state accessibility measures and now most recently another piece of legislation called the Help America Vote Act, makes voters and the process more and more acceptable.

What photo ID in Indiana said if you don't start adding another bumper rail to all that accessibility with measures of integrity like photo ID, then you won't have a process that people will believe. If people stop believing in the process, voter turn-out goes down. When voter turn-out goes down, we lose the republic.

So when my good friend Raphael Anchia says, what is the mood on the table here? Why is the voter turn-out so low?

In Indiana we say people administering the elections don't take it seriously enough. They don't even take it as seriously as the 18-year old who
rented a video, rented me a video last Friday night when he asked for my ID.

In the one academic study that compares apples to apples that studied Indiana's voter turn-out before photo ID and after ID with similar elections, it was the Millial Study from the University of Missouri.

At that time there were only four or live elections we had in Indiana. Turn-out went up five percent. It went up around that time and I expect it will go up some time into the future.

So photo ID wasn't the magic pill to voter turn-out, nor was it expected to be, but it certainly hasn't deterred turn-out and, in fact, has increased it.

Again, we believe because the hypothesis was proved that once you put a balance into the process, accessibility and integrity, you get a process that people believe in.

Identity theft is the highest-growing crime in the United States and in many parts of the world. Yet those that want to come down into the weeds on this issue and demand evidence -- and I'll get to the reasons why it's very hard to produce evidence -- want to have you believe that while
identity theft exists and the risk of it accrues, in every transaction we have in our life's -- financial, social, whatever -- that somehow there's a bubble, an impenetrable bubble around our election process where no identity theft can occur.

And I just don't think and any reasonable person doesn't think that can be the case. 80 percent of voters and taxpayers across this country don't think it can be the case.

And again, if the purpose of photo ID is to instill confidence in the process, again, then that 80-percent public opinion, well, we shouldn't be making our discussions based off of polls, that has relevance. That matters when you're talking about instilling confidence, whether you personally believe there's evidence of fraud or not.

I'm pleased to note for the record that the Carter-Baker Commission that was referenced here in your deliberations for photo ID at the polls.

Is this right? Can I sleep at night? Someone on your committee or an observer with the committee asked that question. You bet I can because this means that every vote counts equally.

There are two kind of disenfranchisement.

There's the kind that we all know to be wrong, and I
think everyone here in this room has actively worked
to deter. And by and large, it's out of our
institutions and our process of voting.

But there's another kind of
disenfranchisement that occurs when those honest
voters, those votes of you, me and our constituents
are cheated, are diluted by those who would cheat the
system. And photo ID makes sure that can't happen.

With regard to evidence, what we've
experienced in Indiana is that first of all -- and
this shouldn't be unique to Indiana -- the crime of
voter impersonation is one that's very hard to collect
evidence on. It happens in an instant and then the
actors disburse.

It's not like you have a dead body after
the act occurs. So to argue that there's no evidence,
we haven't produced any, is to be disingenuous to the
kind of act that we're talking about.

Secondly -- and this may only be true in
Indiana, I suspect -- our prosecutors, the only ones
who can bring criminal charges in the state are
elected. And for me that means two things, and that's
partisanly elected.

At its worse. It means that they won't
file charges for one of two reasons. If they file
against someone in their own party, they're looked at as traders. If they file against someone in the other party, they're looked at as partisan.

The higher road to take with regard to separate elected prosecutors, and I think that's also true with respect to Indiana and across the nation, is that there is very violent crime out there that deserves and needs to be punished.

Voter fraud is not violent fiscally. It's harming. But to convince a prosecutor that they should take a deputy off the violent crime or other terrible acts to go learn Indiana's or whatever jurisdiction's Election Code -- depending on the size of the county, especially -- is just not going to happen.

It's unpractical, and they would argue sometimes it's unreasonable. That does not mean the crime didn't occur. That does not mean there is no evidence. That just means it hasn't been prosecuted for one or more of reasons to which I just explained.

With that, it looks like I have 19 seconds. I'm happy to start taking your questions. Thank you very much for having me.

CHAIRMAN TODO SMITH: All right. Let me start your clock here.
The Supreme Court opinion on Page 3 indicates that "the District Court found that the petitioner's had not introduced evidence of a single individual Indiana resident who'll be unable to vote as a result of the legislation or who will have his or her right to vote unduly burdened by its requirements."

Can you address to any degree that comment and were you present at all? Were you involved in the District Court proceedings and aware of the state of the evidence that caused that District Court judge to reach that conclusion?

TODD ROKITA: Yes. I mentioned that a lot of us are lawyers and we may have had mothers like mine who wanted us to be a medical doctor, who had shook her head in disbelief when I told her I was going to law school.

I said, "Don't worry, mom. Maybe one day I'll get to argue a case before the United States Supreme Court." Well, I didn't get to argue it, but I was a defendant all the way up.

So I do have some very personal experience with it. And in that vain, I'm passing out to you a document that I've authored and titled "Indiana's Photo ID Voting Requirement." My office authored it.
Actually, it has code sites. It dissects Indiana's law for your staff's reference and gives you the site so you can make comparisons.

It is true, the defendants did not produce one person who was genuinely disenfranchised by this law. We took a lot of time. We had hearings just like this. None of the arguments brought by any of your committee members on either side of the issue are making a new argument in my eyes. We've been through this before.

And because of that we made some changes along the way, and the result was a very narrowly draft crafted law that has resulted as the court found in that one disenfranchisement. And that's not to say if they did find one that the case would be lost.

But the Supreme Court found was that there was a very valid and reasonable interest in the states putting parameters on their elections. What I was talking about earlier, to balance all that accessibility with members of integrity.

CHAIRMAN TODD SMITH: Now, despite that balance by the Supreme Court that there was not a single voter who could establish an unreasonable burden, the dissenting opinion in the case indicates that 34 in Marion County -- and I want to give you an
opportunity to address this -- in Marion County -- and 
let me just be clear: Your form of Photo ID 
Legislation is, and I don't expect you to it admit 
that it's onerous -- but it's certainly the most 
onerous form of identification legislation in the 
United States at this time?
Is that your understanding?

TODD ROKITA: No. It's the most 
progressive.

CHAIRMAN TODD SMITH: I'll accept that.
I'll accept that.
TODD ROKITA: And I'll explain.

CHAIRMAN TODD SMITH: Well, it indicates 
that in the dissenting opinion, in the Supreme Court 
opinion, that in Marion County there were 34 
provisional ballots that were cast as a result of 
legislation, but that only two provisional voters made 
to the County Clerk's Office within ten days.
It indicates that all 34 of these aspiring 
voters appeared at the appropriate precinct. That 33 
of them provided a signature and every signature 
matched the one on file. And that 26 of the 32 voters 
who's ballots were not counted in the history of 
voting in Marion County elections.

Now, that's one county that for the
dissenting opinions sites in the big states. And it
does raise questions about the provisional ballot
mechanism chosen in Indiana versus other states in
terms of the extent to which that burden of going
downtown has, perhaps, is not an unreasonable burden
but may, in fact, nevertheless, result in unacceptable
proportions of otherwise, legal votes not counting.

Why is that not a legitimate concern?

TODD ROKITA: Well, first of all, you'd
have to understand: There was no fact trial on this
case, and that evidence went in uncontested in a reply
brief by the ones who filed suit.

So we weren't able to, you know, combat
that in court, and I think that was -- it was a bad
decision on the part of the dissenting judge, a
partisan appointment, Court of Appeals or not. Just
like the two in majority were. Partisan appointments.

CHAIRMAN TODD SMITH: Do you have a
specific response to that particular county or you
just don't know?

TODD ROKITA: No. First of all, I would
say that it's not unreasonable, and we give ten days,
we'll hold up the election results for ten days, if
they forgot their photo ID, didn't even have one at
the time, to prove their identity, which is -- when
you say a strict voter law.

Georgia allows two days. I'm not sure
whether this bill requires a time to come back or not.
We also have exceptions to that.

And the testimony would be in response to
that, well, if until you interview those witnesses,
you don't know if they were ever valid voters of
Marion County. Those 36 could have all been cheating
the system.

The point being: It's a confidence
builder.

CHAIRMAN TODD SMITH: Do you know -- this
legislation was passed when?


CHAIRMAN TODD SMITH: And so we have had
what? Two elections since then?

TODD ROKITA: No, sir. We've had nine in
the state of Indiana. All successful.

CHAIRMAN TODD SMITH: Can you help me know
the number of provisional ballots that have been cast?
Not total provisional ballots, but provisional ballots
cast because people do not have the proper
identification at the polls?

TODD ROKITA: No.

CHAIRMAN TODD SMITH: Unknown?
TODD ROKITA: There's none.

CHAIRMAN TODD SMITH: Because they're mixed in together?

TODD ROKITA: No. All the professional ballots -- you have to have the reason why they cast provisional ballots, but that data is not casted and collected at the state level. You'd have to investigate in every county.

But we do all around and ask and we do get many calls on election day. It's a non-issue.

CHAIRMAN TODD SMITH: Okay. When you say that, you're saying that your impression is the number of provisional ballots that are cast because people in the community do not have the proper identification is minuscule --

TODD ROKITA: Compared to all the reasons for casting a provisional ballot.

CHAIRMAN TODD SMITH: Okay.

TODD ROKITA: I don't want to put percentages out there, but if you had 10 or 100, it would be, you know, in the neighborhood of 2 or 20 but I don't want to --

CHAIRMAN TODD SMITH: I'm not sure I understand what you're saying.

You're saying if you had 10 or 100. Tell
me --

TODD ROKITA: If you had ten provisional ballots, and, again, it's just anecdotal.

CHAIRMAN TODD SMITH: Yes.

TODD ROKITA: Maybe two would be for an ID reason. But then we don't know if those two actually came and presented an ID or if they shouldn't have been voting in the first place.

CHAIRMAN TODD SMITH: I understand.

So you just can't tell me how many statewide provisional ballots are counted or the percentage of those provisional ballots -- well, I didn't ask that question.

You can't tell me the number of provisional ballots cast statewide, give me a general sense of how many there are, or the percentage of those ballots that are ultimately counted pursuant to the manner in which a provisional voter goes downtown and does whatever he has to do in order for it to count? You don't know that?

TODD ROKITA: Without a valid ID requirement.

CHAIRMAN TODD SMITH: Okay.

TODD ROKITA: No.

CHAIRMAN TODD SMITH: Questions, members?
Yes, Representative Anchia.

REPRESENTATIVE ANCHIA: Welcome to Texas, Mr. Secretary. It's good to see you.

TODD ROKITA: Thank you.

REPRESENTATIVE ANCHIA: The Secretary and I are members of the Rodel Fellowship, a bipartisan fellowship, so we have had the good fortune of getting to know each other over the last couple of years and have had, I think, well-reasoned disagreements on this particular issue. But we also found some common ground.

I want to begin the questions with maybe the common ground that you and I have found. Because I know while we disagree on voter ID, you have implemented strategies in your state to increase ballot access. And I think you eluded to that earlier in your testimony where you talked about vote where you live and making voting locations more accessible to people.

And can you talk to me a little bit about those strategies and how much they costed. And let me frame that in the context of Carter-Baker.

Both you and I referred to Carter-Baker, but I think you and I would agree that the Photo ID requirement is just one of 87 different
recommendations made by Carter-Baker.

So if you could talk about in a broader context, things that you did in your state to increase access to the franchise and which ones of those would be consistent with expanding the franchise under Carter-Baker.

Finally, how much do they cost.

TODD ROKITA: Thank you.

The first example that comes to mind that's directly relevant to the photo ID debate that we had and the bill that was actually passed had to do with how we came together after the vote.

And I think no legislation is going to do that for you. I think it's going to be leadership here. Our leadership on this committee and have that fan out in a bipartisan fashion; which I did and I'm not here to blow my own horn.

But what worked for us is that those of us that agreed with the law I put in a room the same room with those who disagreed with the law.

And I said, "We're not going to leave this room until we have a cohesive plan for reaching out to those that some thought would be disenfranchised and some thought would not be and come together with a comprehensive outreach."
And I think that's one of the key things, depending on how the vote goes here, that you all can do together. So those who have sued me and still continue to sue me, like the League of Women Voters, were there that room and we continue open lines of communication, and here's how to best reach folks. And a good idea, though, Rafael, not just public, TV and radio ads, but purchasing some money behind it. But also non-traditional forms of advertising, like inside and outside of buses, for those that, you know, would see it that probably wouldn't have a driver's license. We wanted them to know --

REPRESENTATIVE ANCHIA: I like the advertising idea. How much did your budget increase?

TODD ROKITA: We used the Help America Vote funds, and so we coached it couched it as part of a larger Get out the Vote strategy that we were supposed to do in Get Out the Vote Act.

REPRESENTATIVE ANCHIA: How much did you spend in that?

TODD ROKITA: $1.2 million.

REPRESENTATIVE ANCHIA: Okay. That was for the advertising piece?
TODD ROKITA: For the advertising piece and some was for training and education of the poll workers that the chair mentioned. That was for the first elections and we kind of front-loaded it because this was newer for everybody.

REPRESENTATIVE ANCHIA: Right.

TODD ROKITA: But I will say in Indiana, which is a blue state right now, for those who think that this is going to drive down turn-out, I mean, Indiana is a fairly conservative state. It hasn't been blue in 45 years. It is today with the Photo ID law.

We had a whole bunch of new voters come in and I love to see it and that's because Mrs. Clinton and Mr. Obama campaigned in Indiana's primary state, as well.

REPRESENTATIVE ANCHIA: How much did they spend on advertiser turn-out? I just want to make sure I'm not hearing what I know you're not saying is that turn-out went up because of Voter ID.

TODD ROKITA: No. No. No. I told you before that photo ID is not a magic pill to make -- that's not the point.

My point is that we had a whole group of new voters participate in Indiana this time and no one
found the photo ID to be an issue with all these new voters. That's the point.

REPRESENTATIVE ANCHIA: Back to the strategies you used -- what makes Carter-Baker consistent?

TODD ROKITA: To finish the earlier point, we front loaded the 1.2 million. So even though we had all the early voters in Indiana this time, for education and outreach, we probably only spent $200,000 or so.

And that showed me the point: It's not a conclusive point but it's making me wonder how much you really have to spend on education and outreach versus very laser-like pointed outreach.

Like, for example, because we had so many new college voters in Indiana this time excited over the candidates, we simply mailed a postcard to every new registrant, college or otherwise, and reminded them: Here's the five things you have to bring on election day and one of those is a photo ID.

REPRESENTATIVE ANCHIA: How much did that cost?

TODD ROKITA: That was probably half of the -- that was probably $100,000, maybe.

REPRESENTATIVE ANCHIA: How big is Indiana
Hearing April 6 2009

1 population?

   TODD ROKITA: Six point some million.

   REPRESENTATIVE ANCHIA: So about the size

2 of Dallas, Fort Worth?

   TODD ROKITA: Yes.

   REPRESENTATIVE ANCHIA: How many

3 registered voters?

   TODD ROKITA: Just over 4.5, 4.89.

   REPRESENTATIVE ANCHIA: So less than a

4 fourth of the State of Texas?

   TODD ROKITA: Yes.

   REPRESENTATIVE ANCHIA: I'm just trying to

5 figure out: There's no money in the Fraser Bill, as

6 far as I can tell or no additional advertising

7 requirements. Nothing to put forward for training as

8 far as I can tell from the bill, nothing what you all

9 did in Indiana.

10 You talked a little bit about where. Talk

11 to us a little bit about where you live and where you

12 work, very quickly.

13   TODD ROKITA: Yeah. You know, we have to

14 vote how we live in the 21st century. So you also see

15 Indiana trying to pass a bill that would allow for

16 vote centers, where it gets rid of the precinct

17 structure on election day.
REPRESENTATIVE ANCHIA: Are these mega precincts?

TODD ROKITA: Well, they're mega precincts, but it's more to the point that you can vote in a grocery store or you can vote as you drop your kids off at day care. At school. You don't have to race back to any particular part of the county to try to --

REPRESENTATIVE ANCHIA: Right.

TODD ROKITA: And you can use technology to do that now. And you see me, the Secretary of State, promoting a bill of this section in Indiana that allows for on-line voter registration for not everybody, but for some of us that may have already have our data in a government database like the Bureau of Motor Vehicles. I think that's maybe what you call DPS.

REPRESENTATIVE ANCHIA: Uh-huh.

TODD ROKITA: To do things like that, but photo ID is the springboard, that security measure, that allows you to do some of these other things and retain the confidence of the taxpayer and the voter.

REPRESENTATIVE ANCHIA: You mentioned in your testimony that photo ID stops the cheating, right?
TODD ROKITA: Say what now?

REPRESENTATIVE ANCHIA: You said people who are cheating the system -- photo ID makes it so that that doesn't happen; is that right?

TODD ROKITA: Where did I say this?

REPRESENTATIVE ANCHIA: Just a couple minutes ago.

TODD ROKITA: No. What I said: It's a confidence builder. So whether you believe people are cheating the system or not, what it is is that other guardrail. Again, all that accessibility is a measure of integrity over time.

REPRESENTATIVE ANCHIA: So, essentially, it is your contention that when people believe that the system is better, then, they're going to participate more?

TODD ROKITA: Absolutely.

REPRESENTATIVE ANCHIA: I just read a study from MIT in Columbia from January or February of last year, that said just the opposite. That there's absolutely no correlation related to deterring. Are you familiar with the study?

TODD ROKITA: No.

REPRESENTATIVE ANCHIA: Okay.

TODD ROKITA: And you know, a study that's
1,000 miles away or so from Indiana doesn't hold weight with me. I'm the guy on the ground in Indiana. I know what I see.

REPRESENTATIVE ANCHIA: So with your testimony in Texas, when you're miles and miles away -- how much deference should we give to your testimony?

I'm just offering it up as an admonition, because I think you might undermine your own testimony by doing that.

TODD ROKITA: Hey, I told you at the very beginning, I'm not here to say what I feel ought to be here. I'm here to say what happened in Indiana.

REPRESENTATIVE ANCHIA: Okay. Can you talk a little bit about the system in Indiana.

TODD ROKITA: Sure.

REPRESENTATIVE ANCHIA: In Texas, we've seen little to no cases of voter impersonation. All right. I've studied this for three sessions. Seen people to go interview folks who allegedly did voter impersonation. We haven't been able to find that.

At the same time, I chaired a subcommittee that there is mail-in ballot fraud. Like when you do see fraud, it's typically in mailing ballots, followed maybe thereafter by official corruption by poll
workers or something like that.

I'm curious that in Indiana, you have a
strict photo ID standard on in-person photo or
in-person voters, but you have no a no-excuse system
for mailing ballots. And I'm wondering how that might
square with Texas where we do have instances of fraud
with mail-in ballots that are wholly outside of the
Fraser Bill that we have in front of us today, but the
case where we don't have a lot of that evidence in
terms of voter impersonation.

We're trying to -- let's say, how did you
deal with that in Indiana? You don't even have to be
a senior or disabled in Indiana to do mail-in ballots,
right?

So how do you deal with, especially in
light of your comment that with photo ID, it's harder
to cheat?

TODD ROKITA: Well, first, I'd say you've
been given bad information.

Indiana is not a no-excuse absentee voting
state.

REPRESENTATIVE ANCHIA: Okay.

TODD ROKITA: You have to have the
excuses, boxes that you fill out.

REPRESENTATIVE ANCHIA: What are those?
TODD ROKITA: I'm going to have to go through them again.

You have to be over the acreage of 65. You have to be out of the county the entire time the polls are open or at work the entire time the polls are open.

It could be a person with disabilities. Those kind of reasons.

And we, in fact, did have reforms to mail-in absentee process as well, it's just that the papers weren't interested in that.

REPRESENTATIVE ANCHIA: Did you include a photo ID standard for mail-in?

TODD ROKITA: We had a companion bill that went with the Photo ID Bill. But it would be academically dishonest for us to argue on one hand you need a photo ID so that when you show up to the poll, you can show that you are who you say you are and try to do the sale thing with mail-in.

Because if you don't have a face with a photo, the purpose of the photo is moot now.

So of course, we didn't require a photo be put in there but we had a companion bill that no one wrote about. And that got passed that now made when you checked those boxes that I just mentioned, under
penalty of perjury, so now a prosecutor has something to go on.

REPRESENTATIVE ANCHIA: Can you tell me real quickly what those boxes are.

TODD ROKITA: The 65 years or older. The out of county.

REPRESENTATIVE ANCHIA: So the exemption boxes?

TODD ROKITA: The exemption boxes, yeah.

REPRESENTATIVE ANCHIA: Okay.

TODD ROKITA: And then if you're a third-party and you're turning in absentee-ballot application you have to fill in the Affidavit as to who you are, where you got these applications, what your role in all of this is under the penalty of perjury again, so the prosecutor has something to go on.

And then we made election nearing in front of someone with an absentee-ballot a felony, which it hadn't been in Indiana.

So we did take measures, again, not photo ID measures because they don't take make academic sense, but we did make measures.

REPRESENTATIVE ANCHIA: One of the things we're looking at in the state is also requiring that
anybody who handles mail-in ballots become deputized. Have you guys gone there in Indiana?

TODD ROKITA: We thought about it, and still by adjusting and it trying to figure out if that would make sense in the state.

REPRESENTATIVE ANCHIA: It's one bill that I filed.

TODD ROKITA: And it's actually, something Indiana had and got rid of. And so the question is: Do you go back to that or not and that's what we're debating?

REPRESENTATIVE ANCHIA: Okay. And just to reiterate your testimony on the questioning from Chairman Smith: You're unaware --

CHAIRMAN TODD SMITH: Representative Anchia, we've got ten minutes left for people to ask questions on the committee.

REPRESENTATIVE ANCHIA: I'm sorry?

CHAIRMAN TODD SMITH: Ten minutes left for questions on the committee:

REPRESENTATIVE ANCHIA: For secretary Rokita?

CHAIRMAN TODD SMITH: Yes.

REPRESENTATIVE ANCHIA: Thank you. And I want to be respectful of everyone's time.
How many voters in Indiana were forced to cast provisional ballots because they were not deemed to have adequate ID? Our recollection is it's your testimony you don't know.

TODD ROKITA: I don't know, and antidepressively, it's a very low number.

REPRESENTATIVE ANCHIA: Did you commission a study of that? Did you think that that was important, maybe, to study that number and figure out how many people?

TODD ROKITA: No. Because we operate an 800 election line on and around election day and we just didn't see it being an issue.

So if we saw it popping up on the phone line and through other resources, we would have probably commissioned one with you it was just a non event.

REPRESENTATIVE ANCHIA: Have you reached out to the 34 people in Marion County who were allegedly disenfranchised in the court briefs that were submitted? Did you inquire of that group of people?

TODD ROKITA: You know, interestingly we tried to, but the district clerk who was the same clerk who put in that testimony at the appellate level
would not give us access to the names.

REPRESENTATIVE ANCHIA: And did you try an Open Records Request?

TODD ROKITA: No.

REPRESENTATIVE ANCHIA: Okay.

TODD ROKITA: An Open Records Request might be problematic because you might get -- you might get the names, but the voter still has superseded the ballot. So it's not like we could have gone at the time.

REPRESENTATIVE ANCHIA: But if you had input into the address, you might be able to go --

TODD ROKITA: But the point being, I don't know that that's public record. I'm not sure that it is because you want to protect the secrecy of the ballot.

Me, it's one thing, but you open a slippery slope up to overzealous campaigns in that first days after election trying to harangue people into coming in and we are very protective of the people's privacy.

CHAIRMAN TODD SMITH: Representative Anchia, I've got to move to other members asking questions. I'm going to have to cut it off.

REPRESENTATIVE ANCHIA: Thank you,
Mr. Chair.

If I have additional questions, can I submit those in writing?

CHAIRMAN TODD SMITH: Sure. And it might be helpful, members of the committee, whenever we finish a witness, if anybody would, kind of, raise their hand if you wish to ask questions, that would give me some sense of how many people wish to.

Representative Brown.

REPRESENTATIVE BROWN: Thank you.

Mr. Secretary, you mentioned that you had a companion bill. So this was in the same session you tried to address the mail-in ballots, as well?

TODD ROKITA: Yes, and that bill passed.

REPRESENTATIVE BROWN: Both of them passed?

TODD ROKITA: Yes.

REPRESENTATIVE BROWN: But you don't have such you see we don't have such a companion bill. It's a bit late in our session to address the mail-in ballot. So, right now, do you have any suggestions for us addressing mail-in issue or do you see us proceeding in just trying to come out with a good Photo ID Bill at this session and address the mail-in ballot issue later?
TODD ROKITA: Are you a no-fault state or do you have the boxes, as well, that you fill out when you make an absentee-ballot request? Do you have a special reason to vote absentee-ballot by mail?

REPRESENTATIVE BROWN: Yes.

TODD ROKITA: Yes, I would do the same things that we did, if you can. But it's not necessarily related to photo ID. Photo ID doesn't stand on its own, but I think those measures that we implemented that I already outlined in my testimony would be a good start.

CHAIRMAN TODD SMITH: You can you summarize those again. What are they?

TODD ROKITA: That the application, the whole form, is under oath. The whole reason you put down for needing an absentee-ballot. So if you lied there, at least, a prosecutor can go after penalties of perjury.

No. Two, that election nearing in front of someone with an absentee-ballot is a felony.

And the third one, if you're a third-party turning in an absentee-ballot applications you, too, have to sign an Affidavit as to who you are, what your role is, how you came upon these applications.

CHAIRMAN TODD SMITH: Thank you.
Representative Brown.

REPRESENTATIVE BROWN: We've gotten a lot of feedback from people saying well, you know, a lot of the fraud takes place in middle America and so on.

But I feel like at this point we're taking a very baby steps in securing our elections just by addressing the photo ID at this point we can address the other later.

TODD ROKITA: It's a huge confidence building step.

REPRESENTATIVE BROWN: I agree thank you very much, much.

CHAIRMAN TODD SMITH: Representative Heflin.

REPRESENTATIVE HEFLIN: Thank you. Real quickly: On your provisional ballot -- when they come in and they don't have the proper ID, that it's marked special provisional ballots, and they have ten days to cure -- is that what I understood you to say.

TODD ROKITA: That's right.

REPRESENTATIVE HEFLIN: And how many people came back and actually cured their ballots? Do you know?

TODD ROKITA: Again, we don't have statewide data on that, but there were a lot of other
reasons forecasting our provisional ballot.

REPRESENTATIVE HEFLIN: Right.

TODD ROKITA: But not having a photo ID is an extreme minority reason.

REPRESENTATIVE HEFLIN: So that was a small reason for provisional ballots?

Okay. And the super centers -- the voting centers -- are they all real time computers so if they vote, John Doe in your one precinct and you're two precincts over, and John Doe votes again -- does that flag --

TODD ROKITA: Yeah. The electronic poll votes are tied into our statewide voter file. So when Todd Rokita, because of the kind of guy I am, knows when I try to vote again I'll get stopped.

But the machine, sir, the voting machines, are not, this is not Internet voting of any kind.

REPRESENTATIVE HEFLIN: Okay. And also, do college kids get to use their college ID or do they have to go --

TODD ROKITA: No. Indiana requires or federal ID, if a college person had a passport, that would work.

But some of our college students have come in with California driver's license, for example, or
Michigan or wherever. And based on that piece of ID, we do not let them vote because that's pretty good evidence that they're residents of Michigan or California and should be voting there.

REPRESENTATIVE HEFLIN: Okay. Now, as to the educational requirements: Did you have Voter Registration driver's? Helping people get them prepared?

TODD ROKITA: We've got education outreach. We go to the State Fair. We go to what we call Indiana Black Expo.

REPRESENTATIVE HEFLIN: You took it to the neighbors?

TODD ROKITA: It was a partnership, I mentioned. That's key. One office can't get out like that. You have got to develop a coalition of the willing and unwilling.

REPRESENTATIVE HEFLIN: And as to your Indiana ID -- did the DPS -- is that provided by your Department of Motor Vehicles?

TODD ROKITA: Yeah. It's free of charge.

REPRESENTATIVE HEFLIN: And do they go like to nursing homes and senior centers and help those people get those IDs.

TODD ROKITA: We have a mobile DMV that
does go out. Yeah, they do do those things, actually.

REPRESENTATIVE HEFLIN: And do you know how much that costs?

TODD ROKITA: No. It's in their regular course. They go out anyway. So there's no additional costs.

I would also say that if one of the assisted living facilities is a precinct, that is an exception. Because that is, again, remember I said, it's narrow. So it's an exception there that said well, this is an example of people who probably never leave the ground and even for voting, it's a precinct so they're an exception.

REPRESENTATIVE HEFLIN: I pass.

CHAIRMAN TODD SMITH: Representative Bohac.

REPRESENTATIVE BOHAC: Mr. Secretary, welcome to Texas. I had a couple of questions for you. One of them is it's a question it happens in an instance and the act is disbursed. I assume you were talking about voter impersonation and that's why it's so tricky at the catch. Is that the right context in which you were talking about that particular --

TODD ROKITA: Yes. I hope I didn't leave another one. But that's what I meant.
REPRESENTATIVE BOHAC: I assume that most of the arguments here, you actually heard in your state.

TODD ROKITA: Yes.

REPRESENTATIVE BOHAC: And now that you all are into four years of Voter ID.

TODD ROKITA: And nine elections.

REPRESENTATIVE BOHAC: What's the kind of the sense of both the wrecks and Democrats? Where are you all today? Are people very divided over it or is there a sense that it's been relatively successful?

TODD ROKITA: You know, I think that there's some diversions visions, but I look at Dallas paper and I see a quote from Senator Erline Rogers. She's from my home county, which includes Gary, Indiana.

Now, she and I probably couldn't agree politically on what color the sky is. I think she's a wonderful woman and we get along personally fine.

Her quote is, for a county such as mine and that is always occurred of Voter ID, no one can make those charges anymore.

And I don't know if she realizes this or not, but that was one of my points in the beginning. It levels the playing field. It takes away the
arguments that I think so many feel about being disenfranchised.

Well, if everyone comes with the required document, there is no real reason to deny them the right to vote. So it actually increases the franchise in that regard. No one can make up the politically zealous excuse or even racist excuse to my people from disenfranchised.

They have the document. Get out of their way.

CHAIRMAN TODD SMITH: Well, I'll leave this as just a comment: I can really never put my hands on my Voter Registration Certificate.

TODD ROKITA: No one can.

CHAIRMAN TODD SMITH: So to me, voting with an ID is actually more convenient because I always have that with me. So --

TODD ROKITA: Indiana requires a photo, and if nothing else but a photo and the other things I listed here in this paper for you, Mr. Chairman, and the members will do.

I think you're on a slippery slope to have these non-photo, quote/unquote, exceptions.

CHAIRMAN TODD SMITH: Quick question: To what extent are you familiar with the varying
different studies that are out there on the effect of
your particular legislation on voter turn-out?

TODD ROKITA: To what extent am I
familiar? I think I'm familiar with all of them.

CHAIRMAN TODD SMITH: My understanding is
that there's one from the Brennan Center that says,
you know, they think they have determined that voter
turn-out was depressed by 2.9 percent.

Am I representing that correctly?

Something in that neighborhood?

TODD ROKITA: I'm not sure what they said.

I know they're on the very liberal side of the
spectrum engaged in this partially.

CHAIRMAN TODD SMITH: I understand.

And there's a Heritage Foundation study
which indicates no effect whatsoever, right? Is that
your understanding?

TODD ROKITA: Right. And there's the
University of Missouri study.

CHAIRMAN TODD SMITH: And there's from the
Political Science Magazine, University of Delaware,
two professors from the University of Delaware, one
professor from the University of Nebraska that has
just come out in January of this year, which findings
suggest that Voter ID laws have had no systematic
effect on voter turn-out thus far.

Are you familiar with that report?

TODD ROKITA: I was familiar with the new one.

CHAIRMAN TODD SMITH: Okay. You know.

And in looking at all these reports, you know, forgive me if -- my a little skeptical, frankly, about the allegations that there is any material suppression of voters, but I am also a little skeptical about the allegations of this single factor is a result of the dramatic increases in voting.

My reasoning of the evidence suggests to me that there really isn't any reason to believe that either of those is true in terms of evidence and in terms of studies and in terms of the evidence that is available to this committee.

Would you disagree with that assessment or analysis?

TODD ROKITA: I would disagree with it because of the things I said earlier. Just because there aren't prosecutions, which is like folks like the Brennan Center and others try to rely on, doesn't mean that the fraud isn't there.

CHAIRMAN TODD SMITH: No. No.

What I'm getting at is the extent to which
this legislation effects turn-out. That's the
question I'm focusing on.

TORROKITTA: I think it increases
turn-out.

CHAIRMAN TODD SMITH: And that's based on
the fact that in Indiana, your turn-out went up rather
than down?

TORROKITTA: Right.

CHAIRMAN TODD SMITH: You know, I could
argue that that's like saying, you know the rooster
crows, the sun comes up, therefore the rooster caused
the sun to come up.

You know, in other words, there are a lot
of variables you know, the weather, the number of hot
local races. Lots of variables that could explain,
you know, what turn-out. And unless you really looked
at it from an academic standpoint and isolated that
particular variable, you really don't have much
information in that regard.

And what I'm saying is: My sense of the
total of the totality of the studies is that both
sides are guilty of really speculating without any
substantiating evidence to suggest that this has any
meaningful impact on turn-out at all, one way or the
other.
TODD ROKITA: I disagree.

CHAIRMAN TODD SMITH: Okay. What you believe is that it actually enhances turn-out?

TODD ROKITA: Well, what I believe is that one study out there did isolate all variables and compare apples to apples.

CHAIRMAN TODD SMITH: And which one is that?

TODD ROKITA: University of Missouri, the Moylo, M-o-y-l-o, and the that's the one that found voter turn-out in Indiana went up two percent that we referenced earlier.

CHAIRMAN TODD SMITH: Okay. And so what we've got, then is one study that says it went up two percent. One study that said it went down two percent. And a recent study by these gentlemen --

TODD ROKITA: I'm not as familiar with that one.

CHAIRMAN TODD SMITH: That indicate that it didn't go up at all.

But, again, tell me if I'm correct: My understanding of the studies is that isn't the Brennan society comparing a Lucy-goosy system, where you literally show up at the polls, say, I'm Todd smith. If you're on the voter registration list,
they let you vote to the most progressive, as you
would put it version of photo identification
legislation in this comparison that's being made; is
that correct?

TODD ROKITA: When I say it's not apples
to apples, that is what I mean.

I spent now -- it's been a year or so
since I looked at the Brennan Center study.

CHAIRMAN TODD SMITH: I believe that's
what we would all agree is a progressive or liberal
think tank's conclusion is that you compare the least
burdensome system out there, that is vermont.

Where you walk in, say your name. And if
you're on the poll, they let you vote. You don't have
to produce any identification. To the most
progressive as you put it photo identification
requirement. And they concluded that there was a
2.9 percent reduction in turn-out.

What we're talking about here in the State
of Texas is the difference between a law which already
requires you to provide some sort of identification
and a law which simply authors the kind of
identification that you have to provide for a very
small segment of the community that does not at this
time, subject to free identification alternatives have
a photo identification requirement.

You agree that there is not any evidence
or any study that would indicate in any way that that
sort of a change in the law would in any way adversely
affect any kind of voter turn-out, minority, poor,
elderly or otherwise?

TODD ROKITA: I don't know of one.

CHAIRMAN TODD SMITH: Okay. Thank you.

TODD ROKITA: Thank you.

REPRESENTATIVE ANCHIA: Mr. Chairman.

CHAIRMAN TODD SMITH: Yes. I'd like to

let --

REPRESENTATIVE ANCHIA: I'd just like to

ask one question. I'd just like a couple, if you
don't mind.

CHAIRMAN TODD SMITH: All right.

REPRESENTATIVE ANCHIA: I know, Todd,

there's been a characterization of the Brennan Center
as liberal and, I guess, the Brennan Center is NYU Law
School and is housed at the NYU Law School. Do you

know that for a fact?

TODD ROKITA: Do you know that for a fact?

REPRESENTATIVE ANCHIA: I believe it's the

Brennan Center --

TODD ROKITA: Then I believe you.
REPRESENTATIVE ANCHIA: I'm not trying to be flip. I'm really asking you: There's a characterization by both the Chairman and by you that this is a liberal think tank.

TODD ROKITA: So let me just say yes. I do think it's liberal.

REPRESENTATIVE ANCHIA: Is it housed at New York University Law School? Do you know that?

TODD ROKITA: I think it is but I'm not sure.

REPRESENTATIVE ANCHIA: Are you elected or appointed?

TODD ROKITA: Elected.

REPRESENTATIVE ANCHIA: In what party?

TODD ROKITA: Republican.

REPRESENTATIVE ANCHIA: And do you consider yourself conservative or liberal?

TODD ROKITA: I consider myself conservative.

REPRESENTATIVE ANCHIA: Okay. Since we're placing labels, I thought I'd like the secretary himself identified.

I want to ask you a little bit about some real-life cases in Indiana where people may not have been able to vote.
You said you didn't know if the 34 folks from Marion County were disenfranchised. You didn't know one way or the other if they had been able to vote a regular ballot.

Is there a threshold where we think it's material if one American who's dually registered is unable to vote? Is there a threshold? Is it five when you believe it's material or a problem, that it's not an issue? When does it become an issue? People not being able to vote when they are otherwise dually registered and eligible? When does it become an issue?

TODD ROKITA: Well, I don't know if you can put an exact number to it. I think the state --

REPRESENTATIVE ANCHIA: One, is that a bad result if one is disenfranchised?

TODD ROKITA: Well, I think the state, again, this is probably the third time I'm saying it, as the Supreme Court indicated have a very real interest in putting parameters on their elections.

REPRESENTATIVE ANCHIA: Right.

TODD ROKITA: So this state registers voters. So if someone is otherwise eligible but just didn't register, the state excludes them.

REPRESENTATIVE ANCHIA: That's right.
TODD ROKITA: So if you're going to ask a question like that. --

REPRESENTATIVE ANCHIA: If you're dually registered --

TODD ROKITA: Then you must be arguing that, you know, registration can disenfranchise some folks, and, in fact, it does. If you can't register, then you can't vote.

REPRESENTATIVE ANCHIA: Well, it makes it harder to register.

TODD ROKITA: It's a kind of theory as the Supreme Court has said, states can use to apply these parameters to the process.

CHAIRMAN TODD SMITH: Let me just say, members, that we've got several witnesses that are on early flights and we're not going to be able to hear from them unless we move this along.

And I'm getting from both sides to go beyond the allotted time. And if we do that.

REPRESENTATIVE ANCHIA: This is such a unique opportunity, though, Mr. Chairman.

CHAIRMAN TODD SMITH: We're going to hear from fewer people.

Representative Brown says she has one question. I'm going to let her ask it.
REPRESENTATIVE ANCHIA: Can I finish my last question, Mr. Chairman? I just have one more question.

CHAIRMAN TODD SMITH: Okay. Be quick.

REPRESENTATIVE ANCHIA: There were 12 nuns at the St. Mary's convent in Southbend who were eligible to vote but were turned away because they had expired photo ID in many cases. They brought their passports.

TODD ROKITA: Passports from the 1950s.

REPRESENTATIVE ANCHIA: Okay. They were expired. But otherwise it was their passport. That's not controverted, right?

TODD ROKITA: I don't know if it was. I'm sure it was.

REPRESENTATIVE ANCHIA: It doesn't seem like it's controverted in the record. Is that a bad result? Is that say bad public policy?

TODD ROKITA: No. That was the right result.

And I can say this, and I know you're Roman Catholic. I know that Raphael. I went to eight years' of Catholic School. And if there's one rule that I was taught, even at the risk of getting a ruler thrown down on me is that you follow the law. That
the law applies to everyone, whether you're a nun or not.

Those nuns weren't disenfranchised. They just didn't want to follow the law.

REPRESENTATIVE ANCHIA: And you think that produced a good result?

TODD ROKITA: Absolutely.

REPRESENTATIVE ANCHIA: Okay. Thank you, Mr. Secretary.

CHAIRMAN TODD SMITH: Representative Brown.

REPRESENTATIVE BROWN: There is one.

CHAIRMAN TODD SMITH: One question. Make it a good one.

REPRESENTATIVE BROWN: All right. There's one thing that I think has been neglected today, and I wish you would close with just addressing the fact that the Indiana bill did go before the Supreme Court and was upheld at that point.

Can you just give a quick statement about that and the finding.

TODD ROKITA: Absolutely. The Supreme Court said this was a long overdue reform and that the states had an interest in putting guardrails and parameters around the process of their election so
that they can could have a result that is fair, accurate and that people could believe in.

   REPRESENTATIVE BROWN: And that was about what numbers on that decision?

   TODD ROKITA: 6 to 3.

   REPRESENTATIVE BROWN: That's right. 6 to 3.

   Thank you so much.

   TODD ROKITA: Thank you. It's a pleasure to be here.

   CHAIRMAN TODD SMITH: Thank you, Secretary. We do very much appreciate the you taking the time to come down and subject yourself to this.

   TODD ROKITA: It's my honor. Thank you.

   REPRESENTATIVE VEASEY: Mr. Chairman, I did want to make one statement. I didn't have any questions but I wanted to clarify.

   You had said that the Carter-Baker Commission was in favor of Voter ID. They wanted to make a clarification on some of the comments that would be misconstrued after the report was released.

   And so they wrote an editorial saying, quote, until we have universal registration, we cannot make having such an ID a condition of voting.

   So I did want to make sure that that was
clarified for everybody in the audience and the members of the committee.

REPRESENTATIVE BROWN: And that came from who?

CHAIRMAN TODD SMITH: It came from Jimmy Carter and James Baker.

TODD ROKITA: Jimmie Carter and Secretary Baker.

CHAIRMAN TODD SMITH: It's an editorial and it illustrates what's in the report, which is that they believe it's important to expand access and security at the same time. They believing both are important. That's the conclusion and I agree with them. I think everybody on the committee does.

The next witness is Diane Trautman, who is a professor of education and is going to testify against Senate Bill 362. She's from Harris County.

Please identify yourself, your name and who you Representative on represent on the record.

MS. TRAUTMAN: Good afternoon. And thank you for allowing me to testify today.

My name is Diane Trautman. I live in Humble, Harris County, Texas, where my husband and I have raised three children.

After working in the banking industry I
changed careers to teach at the middle and high school level, became a principal and then a college professor. Teaching classes in leadership and ethics.

As my fellow Harris County Representative Allen and Representative Bohac know, I was the democratic nominee for Harris County, Texas Tax Assessor in 2008.

As a candidate I did my best to learn as much as possible about the election-related responsibilities involved in being a voter registrar. And although I didn't quite get 50 percent of the vote, my interests in free and fair elections is the reason I'm here today. Not campaign politics or partisanship.

Elections must be free from fraud and intimidation. As we encourage full participation by every citizen who is eligible to vote, that should not be a Democratic or a Republican value.

Having taught ethics and leadership classes to young people, I abhor the cynicism bred by fraud and cheating. But I am concerned that a proposed Voter ID legislation went do a thing to stop fraud and it could make it harder for many Texans to vote.

The question: We have problems in our
After butterfly, hanging chads, vote caging and the lack of a verifiable paper trail for electronic machines, many have lost confidence in our system.

But no one has lost confidence because of voter impersonation. The only kind of alleged fraud that would be addressed by a photo ID requirement. Because it is so rare that it hardly exists.

To my knowledge, there has not been a single case of voter impersonation that exists in Harris County. And claims made by our tax assessors office that numerous dead people and non citizens have actually voted in Harris County, have proven when scrutinized to be greatly exaggerated, due to donor matching problems and clerical error.

For example, last year this committee was told under oath by former Tax Assessor Collector Paul Betencort that in Harris County there were 381 iron clad cases of Voter ID, 315 non-citizens trying to commit Voter ID, and 22 non-citizens who had voted.

However, there has only been one attempt at voter fraud prosecution in Harris County in the last eight years. And this committee's interim report found that of the 22 non-citizens who had allegedly voted, one person could be confirmed as having voted.
but, and this is important, only after he was issued a registration card by the county even though he did not check he was a citizen on his application.

Another woman voted once before she became a citizen. Many of the others were, in fact, citizens.

As a taxpayer I am concerned that our Tax Assessor's Office had been coming to Austin for years on the taxpayers' dime, testifying as experts with inflated claims as aggressive advocates with this Voter ID agenda, when they couldn't even do their own job back home.

With all due respect, if this committee is really concerned about the integrity of elections, please quit trying to solve a phantom voter impersonation problem and do something about the thousands of eligible voters whose names weren't on the voter rolls in Harris County when voting began last year.

Those are real numbers, of real people being denied the right to vote. Unfortunately, these problems will be even worse if a Voter ID bill becomes law.

On October 20, 2008, the first day of early voting, the Houston Chronicle reported that more
than 13,000 Voter Registration applications in Harris County had not yet been processed, which meant these newly registered voters were not on the voter list at the county's 36 early voting locations.

No other major Texas County had that problem. These Voter Registration problems relate directly to the proposed Voter ID bill because these more restrictive requirements will lead to more provisional ballots being cast by voters who do not present required ID.

The county of provisional ballots was also a huge black eye for Harris County and it wasn't a partisan issue.

A lifelong Republican chaired the ballot board, and he said the counting of provisional ballots was delayed by slow, faulty work by the Tax Assessor's Office, who delivered the bulk of the ballots, some of which appeared altered on the final day of the seven days the board had to do its work.

If the integrity of elections is what we are really discussing today, please consider what just happened in our state's largest county before you pass a law that would place more bureaucratic barriers between Texans and the ballot box and how that law would impact a ballot for bureaucracy that isn't even
Instead of enacting restrictive measures that keep people from voting, let's keep our election system up to 21st century standards to make voting both easier and more secure.

Taxpayers have a right to expect, at least, that much from our government.

CHAIRMAN TODD SMITH: All right. Thank you very much.

MS. TRAUTMAN: Thank you.

CHAIRMAN TODD SMITH: You talk about the fact that -- you agree that voter fraud is a problem.

MS. TRAUTMAN: I think that it is a serious issue, and I think it should be prosecuted to the full extent of the law, if we could just find some evidence where it happens.

CHAIRMAN TODD SMITH: No. I think your position is that voter fraud occurs more with absentee-balloons than it does impersonation.

But is it your position that voter fraud is not even a problem in our state?

MS. TRAUTMAN: I don't think there's any evidence for it.

CHAIRMAN TODD SMITH: You don't think there's any evidence of voter fraud in our state?
any kind?

MS. TRAUTMAN: No, I don't. The record doesn't show that.

CHAIRMAN TODD SMITH: You don't think that there's evidence that even voter fraud is on absentee-ballots?

MS. TRAUTMAN: I'm not aware of any have.

CHAIRMAN TODD SMITH: I thought earlier in your testimony you had indicated that, in fact, that's where you thought the voter fraud was --

MS. TRAUTMAN: No.

CHAIRMAN TODD SMITH: With regard to absentee-ballots --

MS. TRAUTMAN: No. Not at all.

CHAIRMAN TODD SMITH: Okay. So your testimony is you don't think we have a voter fraud problem either with regard to absentee-ballots or with regard to impersonation?

MS. TRAUTMAN: No. I don't see any evidence in the record.

CHAIRMAN TODD SMITH: Okay. I misunderstood your earlier testimony.

Do you think it's easy to prosecute voter fraud?

MS. TRAUTMAN: Well, there haven't been
any prosecutions so we wouldn't know.

CHAIRMAN TODD SMITH: Okay. So you don't have any opinion on whether or not it is easy to identify and prosecute that particular crime?

MS. TRAUTMAN: I think we have to have evidence first.

CHAIRMAN TODD SMITH: Okay. I just want to quickly run through some stuff since you don't think there's any evidence of voter fraud at all.

We have an indication, and again, some of this is impersonation, some of it is not.

Progresso case -- I believe, that's in the Vice-Chairman's district, where there is an Affidavit from an undocumented worker indicating that someone had given him the Voter Registration card and asked him to vote in their place.

We have an AG investigation, which Representative Anchia may correctly indicate that did not identify any particular in-person fraud, but which did identify a man who voted twice in Starr County. A woman who voted for a dead mother. A Council Member in Port Lavaca who registered non-citizens.

We have indication that in Houston in March of '08 primary, a dead woman voted in person near her home. We have an Attorney General brief
where there was prior testimony of witnesses in Texas about voter fraud.

We have in Harris County, one occurred in your county, who registered hundreds of voters, changed their addresses and then voted for them on election day.

We have stolen registration cards. A cry that only makes sense if one is intending to impersonate voters allegedly by those who brought that up.

REPRESENTATIVE ANCHIA: We have testimony to all that that you're quoting now?

CHAIRMAN TODD SMITH: This is from the documentation that I reviewed prior to the hearing. I'm giving her the chance to respond to that to any extent that she's familiar with it.

REPRESENTATIVE ANCHIA: I just want to make sure that you're not stating that the cases out of Progresso are confirmed in any way.

CHAIRMAN TODD SMITH: I stated what I found in the documentation that I reviewed prior to the testimony today in giving all the witnesses an opportunity to testify on it that an individual has signed an Affidavit stating that he is an undocumented work they're was asked, handed a Voter Registration...
card and was asked to vote for someone at the polls.

REPRESENTATIVE ANCHIA: And you'll stipulate that that's still under investigation?

CHAIRMAN TODD SMITH: There's not been a trial.

REPRESENTATIVE ANCHIA: Nor has there been an indictment to my knowledge.

CHAIRMAN TODD SMITH: You know I'm representing what I have read in the press stories from that area, representing the state of the evidence. And I'm not done yet.

Michael Zorr -- all the things I'm mentioning until I state otherwise, are from the Attorney General brief.

Michael Zorr voted two times in 2006 in two different locations.

James Scherr, an attorney.

DIANE TRAUTMAN: Who is that?

CHAIRMAN TODD SMITH: That one, I believe, was in a different state.

DIANE TRAUTMAN: Okay.

REPRESENTATIVE BROWN: She's from Harris County.

CHAIRMAN TODD SMITH: I understand.

James Scherr, an attorney casts two
ballots several times in 2000, and 2002. One of the potential dozens of double voting cases that occurred in Kansas City.


The Atlanta newspapers said between 1980 and 2000, more than 5,000 people voted after their deaths.

In the valley in Texas, a voter registration card was issued to imaginary voters and given to real people. Those are the evidence that's presented in the Attorney General's report.

The Baker-Carter Commission talks about the November of 2004, the Washington Governor's Race, ex-felons and the dead voted.

They talk about it in Milwaukee, there were, this is the Carter-Baker Commission, 200 felons.

REPRESENTATIVE HEFLIN: Mr. Chairman, I'd like to respectfully interrupt again: Is this lady -- does she have knowledge of all this?

DIANE TRAUTMAN: I do not.

REPRESENTATIVE HEFLIN: Is she testifying to all this?

DIANE TRAUTMAN: I do not.

REPRESENTATIVE HEFLIN: Is there a witness
that could answer these questions?

CHAIRMAN TODD SMITH: I hope so. If I laid this stuff out there, hopefully they will have the opportunity, to extent that they're familiar with any of these cases, to do so, as the testimony progresses.

REPRESENTATIVE HEFLIN: So I have to ask: Are you testifying on your time or are you taking up her time?

CHAIRMAN TODD SMITH: Well, I'm trying to give all these witnesses an opportunity to respond to these questions.

REPRESENTATIVE HEFLIN: I would ask that her time be --

CHAIRMAN TODD SMITH: There has been testimony from this witness that there is no voter fraud.

REPRESENTATIVE HEFLIN: In her knowledge. Her knowledge of Harris County.

CHAIRMAN TODD SMITH: All right. Well I'm sitting from the Carter-Baker Commission.

IN Milwaukee, 200 felons. 100 voted two times. Others used fake name or address or voted in the name of the dead.

4,500 more votes were casts than voters
The Carter-Baker Commission listed that there's no evidence of extensive fraud in U.S. elections or of multiple voting, but both occur and it could affect the outcome of a close election.

While this is a quote, while the commission is divided on the magnitude of the voter fraud, with some believing it is widespread and others believing it is minor, there is no doubt that it occurs.

In closer disputed elections and there are many, a small amount of fraud could make the margin of difference.

I've got another page of information from the January of '09 Elections Committee Interim Report identifying a number of instances.

DIANE TRAUTMAN: Mr. Chairman, I ask: Have any of these been prosecuted?

CHAIRMAN TODD SMITH: Well, there's, you know --

DIANE TRAUTMAN: Because that's what I would call voter fraud, if it's been prosecuted.

CHAIRMAN TODD SMITH: Okay. So if it hasn't been prosecuted, then in your mind it didn't occur?
DIANE TRAUTMAN: Obviously there is no evidence or there's not enough evidence.

CHAIRMAN TODD SMITH: Okay. Members.

Representative Heflin.

REPRESENTATIVE HEFLIN: In Harris County, are you aware of any cases that have been prosecuted for voter impersonation?

DIANE TRAUTMAN: No, sir, I'm not.

REPRESENTATIVE HEFLIN: Okay. And that's where you have knowledge of; is that correct?

DIANE TRAUTMAN: That's correct.

REPRESENTATIVE HEFLIN: Now, you're here today testifying -- tell me again your background.

DIANE TRAUTMAN: Professor of education.

REPRESENTATIVE HEFLIN: Okay.

DIANE TRAUTMAN: And former candidate for Harris County Tax Assessor.

REPRESENTATIVE HEFLIN: Okay. So you ran for office? You watched the process? You're familiar with the voting process in Texas?

DIANE TRAUTMAN: Yes, sir, we researched quite a bit with the Harris County Tax Assessor. We also researched the registrar.

REPRESENTATIVE HEFLIN: Now, I think in your testimony you said there was one attempt to
prosecute and that was out of 15 non-citizens that actually voted?

DIANE TRAUTMAN: Right.

REPRESENTATIVE HEFLIN: And those 15 non-citizens were actually issued a Voter Registration card. Did I understand that correctly?

DIANE TRAUTMAN: That's correct.

REPRESENTATIVE HEFLIN: Okay. But there's only -- and do you know the status of that prosecution?

DIANE TRAUTMAN: It was dropped.

REPRESENTATIVE HEFLIN: Okay. So as to the issue of voter impersonation, whether it's right or wrong or whether that's what we need to fix today, I would ask you: Do you believe that in Texas, that we have a big issue with voter impersonation?

DIANE TRAUTMAN: I do not. I do, however, believe we have more pressing problems with priorities that we're facing that photo ID takes the time of --

REPRESENTATIVE HEFLIN: Now, would you believe that one of the priorities might be more training for election workers?

DIANE TRAUTMAN: Well, actually, I was thinking about public school funding, actually was one of the bigger priorities. But yes, we do a lot, a lot
more training.

REPRESENTATIVE HEFLIN: Okay.

DIANE TRAUTMAN: Actually, of the things that were uncovered in the inconsistent practices that were found by a non-partisan expert, according to sworn depositions of employees who worked in the Tax Assessor's Office, which have been provided to, at least, one legislator upon request.

No. One, there was a concerted effort to downsize the registration office, starting in 2006, and the number of employees dropped from 40 to 13 as people who transferred out were not replaced.

Workers were just thrown in when they started without adequate training, instructions or a manual.

The remaining workers are requested more staff, but none were added until temporary workers were brought in near the deadline from private enter its not affiliated with the county.

The Tax Assessor himself told KHOUTV that an 18-year old who was denied to vote at the polls on this juror, her application was rejected due to a quote, mistake by a temporary employee, unquote.

So yes, I do think more training.

REPRESENTATIVE HEFLIN: Now, do you know
or have knowledge of how many provisional ballots were
cast in Harris County?

DIANE TRAUTMAN: I believe it was 11,000.

REPRESENTATIVE HEFLIN: 11,000. And do
you know the ultimate treatment -- do you know or do
you have knowledge of how those ballots were
ultimately treated?

DIANE TRAUTMAN: One of the problems, I
think, is the connection.

And as I said earlier, problems with Voter
Registration relate directly to the proposed Voter ID
bill because these new requirements will lead to more
provision ballots being cast by voters who do not
present required ID.

In 2008 the counting of provisional
ballots was a big problem according to lifelong
Republican, Jim Harding, a retired business executive
who chaired the ballot board and who told the Houston
Chronicle on November 12th that the counting of
provisional ballots was delayed by faulty work by Tax
Assessor Betencort's staff.

The Ballot Board convened after the
election in there are 2,000 provisional ballots that
need to be checked before each is being counted but
the board can only accept or reject the ballot after
the voter Registrar's Office sends over recommendations.

The board had only seven days to rule on whether a vote counts or not, but Harding said the process was made even more difficult because he didn't get the bulk of the ballots from Betencort's office until the final day.

On hundreds of voter forms information has been mapped by the Registrar's Office with white correction fluid and then altered with new information.

As Ballot Board members determine whether ballots should be counted, Harding said they wanted to have confidence in the accuracy of the Registrar's research. But quote, that kind of confidence is not replicated here.

And then when they see this white out all over the place, they get nervous, meaning his workers, unquote. He said.

REPRESENTATIVE HEFLIN: Okay. Let me interrupt you real quick.

DIANE TRAUTMAN: Okay. Sure.

REPRESENTATIVE HEFLIN: Because we're trying to move on here today.

As to -- and I don't like the issue, I
don't like the name of a Voter ID bill. I think we ought to be doing a voter enhancement bill, if anything.

Do you believe that if we had treatment, better treatment of provisional ballots, whereas someone gets to a poll at 5:07, they don't have their ID, they can come back the next day or so and appear, like they do in Indiana?

Do you believe that that's a realistic step in this understanding? This is a tall stair we're going up one step in the process of enhancing voters?

DIANE TRAUTMAN: Honestly, if we can take that much time to address it, then it must not be something that is in dire straits that we take care of.

So I think, again, you know, we're chasing a solution in search of a problem.

REPRESENTATIVE HEFLIN: Oftentimes here in Austin, we fix many things that are not broken.

But if we're going to try to fix this thing that's apparently not broken, would you agree, and you ran for office, that treatment of provisional ballots, whereas to make sure we don't lose 11,000 voters, would be a logical step in our process?
DIANE TRAUTMAN: We want to protect the voters, but a Voter ID bill, the way that I see it, would cause more provisional votes.

REPRESENTATIVE HEFLIN: Okay.

DIANE TRAUTMAN: Thereby adding to the problem of the burdening an already overburdened and under trained Tax Office.

REPRESENTATIVE HEFLIN: And as with all due respect to Mr. Chairman: Those issues that he went on and on about, honestly.

CHAIRMAN TODD SMITH: Seven minutes.

REPRESENTATIVE HEFLIN: Seven minutes, you have no personal knowledge to those, do you?

DIANE TRAUTMAN: I do not.

REPRESENTATIVE HEFLIN: Okay. Thank you very much. Thanks for coming down.

CHAIRMAN TODD SMITH: Raise your hand, members.

Representative Brown.

REPRESENTATIVE BROWN: Ms. Trautman, you referred to those ballots being received so late in offices or the registration -- voter registration applications being received too late.

How long a period of time does it take?

Do the authorities have after receiving those to get
them to make them effective?

DIANE TRAUTMAN: Seven days. Seven days

is the usual time.

REPRESENTATIVE BROWN: I beg your pardon?

DIANE TRAUTMAN: Seven days.

REPRESENTATIVE BROWN: You send in a Voter Registration Application and they have to have it effective in seven days?

DIANE TRAUTMAN: They have to notify you -- well, at that point, I'm not sure I understand your question.

Are you talking about the people who had already sent them in and they were waiting and they got turned away at the polls?

REPRESENTATIVE BROWN: Yes. People who had sent in a Voter Registration Application. And you're saying they have to have seven days to turn that around?

DIANE TRAUTMAN: Well, yes, they have to let them know in seven days, exactly. After that time, when they were turned away at the polls and they had them -- many of them had sent them in, as many as 40 days earlier.

REPRESENTATIVE BROWN: Okay. It's my understanding the office has 30 days to make that
DIANE TRAUTMAN: Okay.

REPRESENTATIVE BROWN: 30 days.

DIANE TRAUTMAN: I may be wrong on that.

REPRESENTATIVE BROWN: I think everyone here would have to agree with me.

DIANE TRAUTMAN: But there's a seven-day notification I know that they have to do.

REPRESENTATIVE BROWN: Any would be after -- I don't know, something else happened. But when you sent in an application for a Voter Registration card --

DIANE TRAUTMAN: That is correct. But I'm talking -- this is a different situation.

These people had been waiting months, and assumed they were ready to vote, they thought they were on the road.

REPRESENTATIVE BROWN: Okay.

DIANE TRAUTMAN: And they went there and they were not: They were rejected.

REPRESENTATIVE BROWN: Have you ever worked an election?

DIANE TRAUTMAN: Yes.

REPRESENTATIVE BROWN: So you are familiar with the process.
How many elections did you work?

DIANE TRAUTMAN: I worked as a clerk a couple of times before I ran for office.

REPRESENTATIVE BROWN: And you're testifying as an authority on the issue?

DIANE TRAUTMAN: No. I'm testifying as a citizen, a private citizen very concerned about keeping our elections free and making sure that everyone's right to vote is protected.

REPRESENTATIVE BROWN: I agree with that. That's a worthy goal. We're all here to do that.

CHAIRMAN TODD SMITH: Anybody else on the committee who wishes to ask this witness a question before I let one of our non-committee members ask a question?

Take your chance now if you have any questions.

Represent Allen. Dr. Allen.

REPRESENTATIVE ALLEN: I just wanted to say to Ms. Trautman, thank you for coming today and thank you for all the services you've rendered to our community.

And if we were not doing a Voter ID bill, and I know that you would know after you did all of your research for running for your position, what
would you recommend we be doing rather than doing a Voter ID bill today? What would be a better use of our time and resources?

DIANE TRAUTMAN: I definitely think we need to be addressing public school funding.

In my district, my home district, Humble ISD we have seen teacher layoffs. We have seen schools unable to open, that have been built because we can't afford it.

We must have a school funding formula that fairly addresses the adequate and equality of school funding statewide. I think there's no higher or more important calling right now.

REPRESENTATIVE ALLEN: Thank you.

CHAIRMAN TODD SMITH: Does everybody on the committee have what they need?

Representative Gutierrez.

REPRESENTATIVE GUTIERREZ: Thank you, Mr. Chair. I'll make this brief and I promise I'll leave after this.

CHAIRMAN TODD SMITH: You don't have to do that. You can stay with us all night long if you want to.

REPRESENTATIVE GUTIERREZ: This is an important issue to folks in my district back home.
And I wanted to ask Mr. Rokita some questions but unfortunately was unable to.

So I'll ask Ms. Trautman some questions.

Ms. Trautman, what you do is obviously very important, correct? And the chairman brought up certain issues that you weren't familiar.

Were you familiar with any of the investigations in Texas, at all?

DIANE TRAUTMAN: The investigations, as far as --

REPRESENTATIVE GUTIERREZ: Different district attorneys also investigated this issue in their own counties. Are you familiar with any of them at all?

DIANE TRAUTMAN: Again, unless it was prosecuted, no.

REPRESENTATIVE GUTIERREZ: Well, for instance in Bexar County, our Republican District Attorney, Susan Reed, investigated this issue at length, and only found two instances of legal citizens going to jury duty and saying they were illegal immigrants.

So indeed, she had found no voter fraud of any kind or Voter ID issues in Bexar County.

So with that in mind, Mr. Chairman, I just
want to reiterate some of the things that have been said and insure that when we have witnesses come up and I thank you for your time in what you said.

Because, indeed, this is what you call it -- we don't want to find solutions to problems that don't exist and you said it a lot better than that.

I think that when we do have witnesses like the previous witnesses, like the previous witness we need to limit ourself to evidentiary issues and not anecdotal data that cannot be supported.

So with that in mind, Mr. Chairman, I'll do as I said and promise to just sit back and listen.

This is an important issue to me because my parents were immigrants to this country and they worked very hard to get here and they earned their right to vote.

So I did want to spend a little bit of time with you today and ask you to be considerate of the evidence that's presented and not anecdotal information or folks that want to rely on certain studies but not others.

CHAIRMAN TODD SMITH: And let me just say for the record that in the last few weeks I've been reading a little bit of this stuff.

And on one side of the issue, the argument
is that fraud occurs primarily with absentee-ballots and there's not a lot of evidence of in-person fraud.

And on the other side of the argument is the argument that while there's not a lot of proof of in-person fraud, that it may be the tip of the iceberg and therefore, there is reason to enhance the security of our elections. That's the debate that's been occurring.

It's the first time I've heard a witness actually take the position that they don't believe there is a lot of voter fraud that occurs even with regard to absentee-ballots.

And let me just say that when we have proof, it's not a matter of opinion, it's a fact, that we have many instances that have been demonstrated of inside the state and outside the state of people voting after they've died, and in almost every instance, they are not prosecuted because nobody knows who cast that dead persons vote.

The only thing we know for sure is that it wasn't the dead person. And so I think that that is an example of how you can know there is voter fraud and know at the same time that it was not prosecuted because you can't do it.

And so that's not an opinion I'm
expressing. That's a fact.

And I am here today to hear from both sides of the argument on issues that are a matter of legitimate discussion about people's opinions. But when the testimony goes outside the bounds of what we know, then I'm probably going to ask an asserted question or two.

All right. Thank you. Thank you very much for taking time to be with us today.

DIANE TRAUTMAN: Certainly.

CHAIRMAN TODD SMITH: We appreciate it.

At this time the chair calls John Fund, who is representing himself and is the author of a book relating to voter fraud, and I'll let you sell your book if you want to.

JOHN FUND: Free copies are available to anyone on the committee's who wants one.

CHAIRMAN TODD SMITH: Your name and just to make it clear on the record: You're testifying in favor of Senate Bill 362.

JOHN FUND: I'm testifying on the notion of the need for more voter integrity, which includes photo ID or other voter identification requirement.

CHAIRMAN TODD SMITH: Your name and who you Representative.
JOHN FUND: John Fund. I'm the author of
"Stealing Elections How Voter Fraud Threatens Our
Democracy."

CHAIRMAN TODD SMITH: All right.

JOHN FUND: I want to apologize, first,
because I have a flight to catch and I'm not trying to
be rude or in any way cut short your questions, nor am
I shirking them. But I will have to leave. And I
apologize in advance for doing so.

I would be happy to answer questions in
writing. I would be happy to communicate by telephone
with any of the committee members, should they have
questions.

So I apologize in advance for making my
remarks somewhat brief and they will be somewhat
truncated.

CHAIRMAN TODD SMITH: Tell us what we need
to know.

JOHN FUND: Well, I think one of the
things that Secretary Rokita mentioned is very
important, which is we now have a four-year experience
with Indiana law in Indiana and some minds have been
changed.

I have reported from Indiana. I have been
one of the people who investigated the Chicago voter
fraud case, which is one of the more infamous voter fraud cases in which an election was thrown out. And we've now had four years of experience.

I think the Dallas Morning News article today is very significant because it quotes State Senator Erline Rogers of Gary, Indiana, who says that the Voter ID law in Indiana has not hurt people's ability to vote.

In fact, she said that it's helped areas such as her region located close enough to Chicago to carry a stigma to include the reputation.

And the quote that Secretary Rokita gave you is for a county such as mine, it is always accused that voter fraud. No one can make those charges anymore. It has helped our image.

So I understand that there are people who still view the Indiana law as controversial but there are people who opposed it when they voted on the issue in the legislature in 2005 who have changed their mind. And I think that's significant.

In addition I would note that there are also people who were very active in the civil rights movement in the 1960s, who do not believe this is a very controversial issue.

I have interviewed Andrew Young who's a
And he believes that yes, it is important that people do not have photo ID or other identification. That's why we should go help them get it.

How can you elevate yourself from poverty to the middle class if you don't have ID? We should use this opportunity to include our election integrity to create, to actually get I.D., create integrity to actually get photo ID in the hands of more people.


You cannot even board an Amtrak train because they have spot checks of ID. You cannot do an awful lot of things in American life without an ID. I don't think that the percentage of people who lack identification is five percent. I think it's far fewer.

But for those who do lack identification, whether they're a senior citizen in a nursing home, whether they're some who's elderly and has never had
identification.

Whether they're a poor person in an urban ghetto, we should get them ID. That's why Andrew Young supports it. He views it as a positive effort to not only improve election integrity, but to also mainstream people into American society.

Now, a point has been made about the fact that there's very little evidence that voter fraud or of the impersonation level exists.

Well, yes and no. If you practice voter impersonation fraud or you create fictitious people and vote on their stead or you vote on behalf of dead people, you can get away with it for an awful long time.

Democratic Congresswoman Elizabeth Holstein, was very active in the voter investigation of Richard Nixon ordered the District Attorney in Brooklyn.

In 1989 her Grand Jury issued a long report on the voter fraud conspiracy involving fraud at the polls, which has operated successfully for 14 years. That fraud resulted in thousands of votes being cast fraudulently in state Congressional elections, and involved impersonating voters at polls, voting under fictitious names that have been
1 successfully registered without, and there's other
methods.

This fraud could have easily been stopped
or detected if it required voters' identity at the
poles.

According to the grand jury investigation,
the advent of mail-in ballot, mail-in registration was
also a key factor in the voter fraud.

I interviewed people who are active in
that investigation. I interviewed people who were
active in the Grand Jury. The only reason that scheme
and conspiracy, which went on for 14 years, was
uncovered is because somebody was indicted for another
crime.

And in order to carry favor and get a more
favorable sentence from the judges, turned state's
evidence on the people committing the impersonation
fraud.

Now, the other examples, I have
interviewed people who personally committed
impersonation fraud. My colleague Glen Simpson, who
is a news reporter for Wall Street Journal has
interviewed people who personally committed
impersonation fraud.

Glen Simpson wrote a book with Larry
Sabato, who is the premiere political scientist at the University of Virginia. The book is called "Dirty Little Secrets."

They interviewed people who committed impersonation fraud. Now, why can't I give you their names? Well, it's a felony. It's not exactly that you're going to get people to come out and use their names.

I've interviewed those people. I will turn over my notes. I just can't turn over the names of those people.

Is it common? Probably not. Does it happen? You betcha. And it is easily done. I can give you ten different ways.

You can vote in someone else's name. You can vote for someone who's dead or you can vote and create a completely fictitious person and vote for that person.

I can give you about ten different ways to do it with almost no way of being detected. And with almost no ways of knowing that it was done.

Now, lastly about prosecutors: I want to reiterate what Secretary Rokita said about prosecutors.

This goes at the very bottom of their
priority list for very obvious reasons. You are going
to be accused of being partisan no matter who you go
after.

You're either going to be viewed, as
Secretary Rokita said, as a trader or someone who is
on some kind of vendetta.

I interviewed the U.S. attorney for the
northern district of Louisiana, Mr. Washington, who
told me, very specifically, that prosecutors are very
loathe to go into these kind of cases because quote,
we can't do much of anything about ballot box
improprieties until the election is over, and.

And the closer we get to the election, the
less willing we are to get involved because of just
the appearance of impropriety, just the appearance of
the federal government somehow shaving this election
not to occur.

If you'll recall the U.S. Attorneys'
scandal in 2006 that involved Attorney General
Gonzales, one of the major accusations against him was
that indictments against the group Acorn had been
filed just before the election.

And the charge was, and it was certainly
at the Center of Congressional Hearings of the U.S.
Attorneys, the charge was that this was a clearly
1 partisan attempt to influence the election.
2
3 Well, we now have two more years' of
4 experience with Acorn, and we now know a little bit
5 more about what they were about.
6
7 In Nevada it was a Democratic Attorney
8 General and a Democratic Secretary of State that
9 became so upset by Acorn's tactics that they asked the
10 FBI to raid their offices and you saw what happened.
11
12 One of the things we learned by the way
13 that what Acorn was doing was that it was employing
14 many of their Registrar's from a work release program
15 at the local prison, including several of the people
16 leading their teams for the Voter Registration efforts
17 have been convicted of identity theft.
18
19 In other words, Acorn, in Nevada, at
20 least, was hiring specialists.
21
22 Now, I can understand Justice Department
23 guidelines saying that Acorn should not be indicted
24 just prior to an election. What I can't understand is
25 that that is then used as proof that the prosecutions
of these cases are very easy.

26 They are not very easy. And I will just
27 tell you if any prosecutor ever files these cases,
28 they have personally told me, many of them, they
29 recognized in their political correctness that charges
of discrimination and Jim Crow tactics are going to be leveled against them. And they would view it as unfair, but it also acts as a barrier against everyone in those cases or, at least, makes it a priority.

I only have a couple of minutes for questions and I apologize in advance.

CHAIRMAN TODD SMITH: I think if you need an hour before your 4:50 flight, you can make it, based on my experience, comfortably.

Can you give the opposition here eight minutes or is that too much?

JOHN FUND: I will try.

CHAIRMAN TODD SMITH: I will give the questions to my Democratic colleagues, given the fact that you're willing to leave.

JOHN FUND: That's all right. If I have to leave --

CHAIRMAN TODD SMITH: That's all right.

If they ask a good question, just get up and leave.

JOHN FUND: No. No. No, I don't do that.

CHAIRMAN TODD SMITH: Representative Heflin.

REPRESENTATIVE HEFLIN: Mr. Fund, I appreciate you being here today.

JOHN FUND: Thank you.
REPRESENTATIVE HEFLIN: I wouldn't disagree with you.

You said you have to have ID if you're going to rent a movie. If you're going to cash a check. Those are privileges. Those are not rights.

I think that voting is a sacred right that we need to protect and enhance in this entire process. So I want to ask you this question: To enhance voter participation, what's your No. One step you will take?

JOHN FUND: First of all, let me respectfully disagree with you because if you can name an industrialized democracy that does not require people to show proof of their existence and their identity at the polls, I will send $7,500 to your favorite charity.

We are the only country in the world, the only country in the world, that operates on the honor system when it comes to elections.

I believe we need a comprehensive set of reforms to improve voter integrity. I also believe we need a comprehensive reform to improve access to the polls.

I also believe we need to spend more time and effort to try to train a new generation of poll workers to replace the average age of 70 at the polls,
who don't necessarily have the most up-to-date
knowledge of technology and, therefore, we have a new
generation of people that helps these people with the
polls.

So I don't want to single out a single
element. I just want to say we have to do an awful
lot because Walter Dean Burnham, who teaches just down
the road here at the University of Texas at Austin, is
one of the premier political scientists in America,
that says we have the soft independent system in any
industrialized democracy. And I agree with that.

REPRESENTATIVE HEFLIN: Let me ask you
this question real quickly: If the attorney for the
Northern District --

JOHN FUND: The U.S. Attorney for the
Northern District of law.

REPRESENTATIVE HEFLIN: The attorney for
the northern district, that's right, if those guys
won't prosecute a case, they're not elected.

JOHN FUND: That should tell you
something.

REPRESENTATIVE HEFLIN: They're hired.

JOHN FUND: That should tell you
something.

REPRESENTATIVE HEFLIN: That ought to be
prosecuted or they should be photo ID.

JOHN FUND: No. This is the lowest priority on their staff of things to do, for obvious reasons.

It's not a violent crime. There's also political controversy attached to this. That's the reason why preventing this in advance is so important.

Once you have the vote cast and thrown in a pile of secret ballots, there is no way you can pull it out.

At least, with absentee-ballot fraud, which I do agree is a problem and I do want to address that, at least, with absentee-ballot fraud, when you apply for absentee-ballot, when you have sacrificed, in part, your right to a secret ballot, you leave an evidence trail. There is much less of an evidence trail with in-person voting. Much less.

REPRESENTATIVE HEFLIN: So you're saying that we're spending our time here today on the absolute lowest priority issue that we can deal with?

JOHN FUND: No. I am not saying that.

REPRESENTATIVE HEFLIN: That's what you just said.

JOHN FUND: I am not saying that. I am saying that those both are important.
I'm also saying that Indiana, contrary to what you have read, addressed absentee-ballot voting and addressed in-person voting.

You heard about the Voter ID law. You did not hear about the absentee-ballot. Perhaps you will not hear about it until he's testified.

I'm saying you could do both. You should do both. Do you have to do them at the same time? I don't necessarily think so but I think you should do both.

By the way, Debra Danberg, who used to chair this committee, was very concerned about voter fraud in this state. I interviewed her.

In fact, she was very upset because there were senior citizens' groups in this state who did not stand up for the fact that there were senior citizens being victimized by voter fraud.

And I do have the legislature, in part, under Democratic leadership and under Republican leadership, did address some of those absentee-ballot voter concerns.

You already have visited the issue, in part. I think you need to do more.

REPRESENTATIVE HEFLIN: Yes. I agree.

CHAIRMAN TODD SMITH: Any questions?
Representative Anchia.

REPRESENTATIVE ANCHIA: Isn't it true that you can board a plane without ID?

JOHN FUND: Yes. It's a very complicated procedure and I have done it, and I would not want to visit it anymore.

REPRESENTATIVE ANCHIA: But there's a secondary opportunity for those who want to board a plane without an ID, correct?

JOHN FUND: Well, do you know how well advertised that is?

REPRESENTATIVE ANCHIA: Well --

JOHN FUND: Ask the people in this room if they know about that.

REPRESENTATIVE ANCHIA: But --

JOHN FUND: Ask them.

REPRESENTATIVE ANCHIA: But you pointed out -- I see a bunch of hands that are raised in the back of the room.

But you pointed out that you couldn't get on a plane but, in fact, you can, correct?

JOHN FUND: Yes, you can.

REPRESENTATIVE ANCHIA: Okay.

JOHN FUND: But the federal government does not advise you of it at all. They discourage
that.

REPRESENTATIVE ANCHIA: Right, but the point is you represented that you couldn't, but you can. And you can rent a movie without a photo ID, right?

JOHN FUND: I don't know that.

REPRESENTATIVE ANCHIA: At Blockbuster, for example, you can do it? You can rent a movie at Blockbuster with just your Voter Registration Certificate, right?

JOHN FUND: You cannot rent a video at many companies.

REPRESENTATIVE ANCHIA: Okay. Okay. Let me ask you: You wrote an article entitled democracy in peril. I haven't had a chance to read your book. I'd love a copy if you're handing them out.

September 13, 2004, -- do you remember that article?

JOHN FUND: I write 120 articles a year.

REPRESENTATIVE ANCHIA: I will eventually remember it as you recall it.


JOHN FUND: I don't recall that report. I
write for the Wall Street Journal.

REPRESENTATIVE ANCHIA: In the article you talked about problems in our election systems and you talked about strap (inaudible) from any local elected offices.

JOHN FUND: Yes.

REPRESENTATIVE ANCHIA: From the local and elected offices.

JOHN FUND: Yes.

REPRESENTATIVE ANCHIA: Voter ignorance. Lackadaisical law enforcement and a shortage of trained volunteers.

JOHN FUND: Those are all problems.

REPRESENTATIVE ANCHIA: You talked about the voter law and that it imposed fraud from the rules on states requiring driver's license bureaus to register anybody applying for licenses, correct; is that right?.

You talked about illegal absentee-ballot. You talked about bribing homeless people with cigarettes.

Which of those scenarios would be fixed under the Fraser Bill? The bill before us today?

Have you read the bill?

JOHN FUND: I read several Executive
Summaries. Have I read every single --

REPRESENTATIVE ANCHIA: Have you read the bill.

JOHN FUND: The entire bill?

REPRESENTATIVE ANCHIA: Yes.

JOHN FUND: No, I have not read the entire bill.

REPRESENTATIVE ANCHIA: Okay. But do you know --

JOHN FUND: I have read long Executive Summaries, though.

REPRESENTATIVE ANCHIA: Based on your reading of the Executive Summaries, do you have a sense that any of the issues that I articulated that you brought up in Democracy in Peril would be solved by that bill?

JOHN FUND: I support a full range of election measures that go far beyond this bill.

REPRESENTATIVE ANCHIA: Do you support --

JOHN FUND: Excuse me?

REPRESENTATIVE ANCHIA: Do you support them in isolation or comprehensively?

JOHN FUND: Both. I want to get there as fast as we possibly can.

REPRESENTATIVE ANCHIA: Okay.
1 JOHN FUND: Whether it's piecemeal or
comprehensively, I want to get there.

REPRESENTATIVE ANCHIA: And if it's a
situation like 12 nuns being disenfranchised -- that
doesn't give you clause for pause.

JOHN FUND: Well, I actually interviewed a
couple of those nuns.

REPRESENTATIVE ANCHIA: Okay.

JOHN FUND: And one of those nuns admitted
to me that it was a stunt that they were trying to
discredit the law.

REPRESENTATIVE ANCHIA: Was she an
American citizen?

JOHN FUND: Yes.

REPRESENTATIVE ANCHIA: Was she of age?

Was she of age to vote?

JOHN FUND: But what --

REPRESENTATIVE ANCHIA: But was she
otherwise competent to vote?

JOHN FUND: Representative Anchia, she
wanted not to vote.

REPRESENTATIVE ANCHIA: Was she competent
to vote?

JOHN FUND: Yes. But she --

REPRESENTATIVE ANCHIA: Did she vote a
provisional ballot?

JOHN FUND: Yes. Representative Anchia, she wanted not to vote that day.

REPRESENTATIVE ANCHIA: Did you interview the other 11?

JOHN FUND: I interviewed two of the nuns.

REPRESENTATIVE ANCHIA: Did you interview any of the 34 people in Marion County.

JOHN FUND: I tried to. I couldn't get the names.

REPRESENTATIVE ANCHIA: Okay.

JOHN FUND: Because --

REPRESENTATIVE ANCHIA: Going back to my first question: Do you think it's a good result if people like that are disenfranchised? If any American is disenfranchised by a piecemeal approach to Voter ID?

JOHN FUND: I believe disenfranchisement comes in two forms: One, we fought a long struggle in the civil rights era so that people would not be forced to take poll tests, or take literacy tests or be otherwise intimidated or prevented from voting. That is disenfranchising the voters and that is wrong. It is also disenfranchisement if your civil rights are violated because your vote is diluted
or cancelled out by someone who shouldn't be voting, who's voting twice or doesn't even exist. That is also disenfranchisement.

And by the way, that is not my opinion. The Supreme Court of the United States of America gave a unanimous decision in which they vacated the decision of an Arizona court which blocked that state's photo ID law in 2006.

It said it is disenfranchisement if people's votes are cancelled out or deleted by people who are voting and shouldn't voter impersonation or voter fraud.

REPRESENTATIVE ANCHIA: Are you aware of any voter impersonation cases in Texas?

JOHN FUND: Specifically in Texas?

REPRESENTATIVE ANCHIA: Yes.

JOHN FUND: I have not interviewed people who personally told me they committed voter impersonation in Texas.

REPRESENTATIVE ANCHIA: But, sir, are you aware of any cases?

JOHN FUND: I'm aware people who have claimed such --

REPRESENTATIVE ANCHIA: Are you aware of any documented cases?
JOHN FUND: No.

REPRESENTATIVE ANCHIA: Okay. Thank you, Mr. Fund.

JOHN FUND: Thank you.

I have to leave and I apologize.

CHAIRMAN TODD SMITH: Thank you, Mr. Fund and thank you for coming and we appreciate it.

JOHN FUND: Thank you.

CHAIRMAN TODD SMITH: And I'm sorry you didn't get the full allotment of time.

REPRESENTATIVE VEASEY: Mr. Chairman, we wanted to state on the record and we wanted Mr. Fund to hear this before he went out the door, that Mr. N.D. Yang had expressed that he supported the Baker Commission.

And like I said earlier, the Baker Commission clearly states that you cannot do Voter ID right now until you have universal support.

So we need to be clear because for him to invoke the name of Andrew Young supporting Voter ID is really quite a stretch there.

CHAIRMAN TODD SMITH: He does recommend it along with, I guess, the expansion of real ID, and so we gotta figure out what we're going to do in light of the fact that we don't have real ID. But that's
right. I think that's correct.

At this time, the chair will call Justin Leavitt from the Brennan Center for Justice at New York University School of Law to testify against Senate Bill 362.

MR. LEAVITT: Thank you, very much, Chairman.

CHAIRMAN TODD SMITH: Thank you. Please state your name and who you represent.

JUSTIN LEAVITT: My name is Justin Leavitt. I'm here on behalf of the Brennan Center for Justice at NYU School of Law.

The reference was correct earlier and I want to correct you, Mr. Chair, Mr. Vice-Chair, members of the committee, very much for inviting me here to testify.

I agree both that you have an issue that's caused much debate here in front of you. And I think it's very important to take the tact that you set out so early of trying to get at the real facts behind what's at issue here.

I have written testimony that I've made available to you all. We've also published documentation, reports I'm happy to make available. I didn't bring enough copies for the committee here.
today. And for that I apologize.

I'm going to keep my remarks as short as I possibly can and leave you with written testimony. And any questions that you wish to ask, including, I may be the right person to respond to some of the incidents that you brought up before with Ms. Trautman, chairman. So I'm happy to address any of those as you wish.

As you mentioned, I'm Justin Leavitt. I'm counsel at Brennan Center for Justice at NYU School of Law. We are self-identified as progressive, but we are vigorously non-partisan and I am strictly here in a non-partisan capacity.

The Brennan Center does public policy and research and legal advocacy. We focus on fundamental issues of democracy and justice and we think respectfully that you have one before you here today.

Our method, our trade is to focus on evidence and to go back to the facts that have been established and try and root all of our recommendation ands all the policies we advocate and the basis of those facts.

We emphasize the factual research because we believe the best policy is grounded in careful cost analysis benefit analysis.
And just like you would in starting on a construction project and make a page you wouldn't start a construction project or make a major purchase until you were sure that the benefits outweigh the costs, the same is true in election policy.

And particularly for Texas, Section five of the voting rights act requires such an analysis. This hearing today is about proposing restrictions on the way voters can and have traditionally identified themselves at the polls in order to vote.

And with respect I'm here to testify against the proposal because I believe the costs do outweigh the benefits, that this legislation you all are considering imposes far more costs than the problems it fixes others will talked to at great length about some of the costs that this legislation may impose.

I'd like to focus, if he can in a limited time on the negotiable benefits it provides.

In particular, legislation requiring a restricted form of ID in order to vote at the polls gets in only one sort of problem. It's only designed to get at one sort of problem. And that is impersonation fraud. People pretending to be someone else when they show up at the polls.
We have documents at the Brennan Center's document allegations of all kind of fraud. Some of them are reports that we validate, they actually turned out to be true. Many reports that we've debunked that turn-out not to be true when you look at the real facts.

Impersonation fraud is special in our research. It's the only sort of fraud that I believe you could possibly address.

And what's most notable about it is how strikingly rare it is. Not just to prosecute, but to find, to discover, to report the fact that its existence at all is to notably rare.

Now, some attack this research that we've done saying that we're denying that fraud exists. And I want to be perfectly, absolutely clear: That there are some kind of fraud out there.

You've mentioned some. Mr. Fund mentioned some. Other witnesses will, no doubt, mention others. It's more rare than people believe because many reports are either sensation lift or sloppy. That confuse fraud with clerical error. But sadly it does occur. People still do buy votes.

They still do pressure voters in nursing homes. They still do commit fraud and unfortunately
large amounts of it using absentee-ballots.

They did in the 1970s, use party boss systems to break the law using insiders. The longstanding Brooklyn scheme that Mr. Fund mentioned.

What they don't do in any significant number is commit the sort of fraud that restrictive ID laws, like the one before you that could possibly fix.

At the end of the day, yes, it has happened. There have been a tiny handful of substantiated cases out of hundreds of millions of ballots. Americans are struck and killed by lightning far more often.

Now, some, including Secretary Rokita and including Mr. Fund, has said there are only a few of these reports because this sort of fraud is hard to find.

But even without eyewitnesses and there are often eyewitnesses, there will often be a victim. And there will always, in every single case, be a paper trail, including poll book signature and other records at the polls.

That is to say in this case, there really is a dead body every time because you can go back and look at the poll books to find out if someone else has signed in for that person and whether it was a
mistake, someone above or below in the records, or it
was an entirely different individual.

We've done that research and so we know
it's possible to trace after the fact.

And if you want to swing an election,
you've gotta do this many times, which means many
chances for someone to cry foul.

The hunt for this fraud has been on and
the major national issue at the same time that federal
law enforcement made it a priority and the at the same
time that private actors are equipped and extremely
motivated to find it when it happens.

There were lots and lots and lots of
people looking. And so if this fraud happened with
any frequency whatsoever, over most of the last
decade, you'd expect the phones to have been ringing
off the hook. Not prosecutions. Just reports
somebody stole my vote by pretending to be me at the
polls.

Instead it was barely a ring. Every year
there are far more reports of UFO sightings than of
fraud that an ID could prevent.

This exceptionally rare phenomenon has
been used to drive policy that unfortunately creates
far more real problems than it solves. And
restrictive ID recalls are one good example. They don't solve real problems but they do create them.

When you start shutting down the rules that voters can say that they are who they say they are: You start shutting out eligible voters. Real people.

Most eligible voters we know have ID and have it handy, even photo ID. But many do not. Disproportionately elderly and minority citizens.

I was behind one such senior citizen in line at the airport on the way out here. She did not have ID. She didn't have photo ID and she didn't have other backup ID. And she went through the very same process that Representative Anchia asked Mr. Fund about. The secondary screening it took. I know because I waited for her.

It took 15 minutes. She went through. She had the x-ray scan. She got through and was able to get onto the plane. And that's because private industry and the federal government all recognize that there are some citizens out there in the 21st century who simply don't have some forms of ID and they make accommodations for that.

It is not easy. It's much easier to live in modern society if you have an ID, that's true and
Andrew Young believed that's true. And that's right. But we understand private entity understand and the government has responsibility to make sure that when a vote -- when a right is provided for each, as voting is, that everyone can be validly accommodated have that every eligible citizen will have that opportunity to exercise that right, just like the woman in front of me in line at the airport.

Making things more difficult at the polls, by the way, also increases the burden on poll workers and on election officials. More restrictive ID means more confusion at the polls. And for those who don't have ID with them, more anger.

It also means more provisional ballots, right in the most hectic period of the election cycle.

And your question, Mr. Chair, about provisional ballots in Marion County is it's spot on in that respect. It is a concern and should be a concern.

I see that I'm coming down to the end of my time have I want to address two things if I can. One is the argument, and we heard it before, that asking for photo ID will increase confidence in the system.

And I want to call special attention to
the study have the only study to do, empirical evidence, they went out and asked voters who live in states with photo ID laws and live in states without photo ID laws, do you feel more confident in the elections in your state.

And the voters responded with unmistakable equanimity. It did not have an effect. There was no statistically correlation. If you believe they're flawed, you're going to believe they're fraud whether somebody asks you for an ID or not.

And if you don't believe there's fraud you don't believe there's fraud, whether somebody asks you for an ID. When people say it makes the voters feel more confident, a study has been done and that's been shown not to be true.

The other instance that I want to talk about and I didn't want to spend all my time on it, but because the Brennan Center got so popular even before I got up here, I did want to mention that I actually agree with you chairman on turn-out studies and the limitations on looking at turn-out to see how these things effect voters.

I believe another witness will mention this in much more detail. I believe it's up to you. Two more sentences on this particular topic.
CHAIRMAN TODD SMITH: If you agree with me. Go, go ahead.

JUSTIN LEAVITT: Absolutely. It is part of why the Brennan Center has not done a study on how photo ID effects turn-out, in part, because we agree there are many limitation necessary these sorts of studies. You need a lot of variables over a lot of time in order to really come up with a really conclusive answer is on how turn-out is effected in one way or the other.

That's absolutely correct, and there will be other witnesses who, I believe, will testify to that in much more detail.

What we have done is something we think more reliable is we've asked the citizens. We've done a survey. And there are others, we're not the only ones who have done the survey.

We've asked citizens, do you have X, Y and Z sort of ID. And the answer was, most do but a disturbing number don't. And we're very concerned that anyone, Texas or otherwise, would take action to solve a problem that doesn't exist, but that actually creates a problem for all of those citizens who told us, we don't have what you're asking us to get.

CHAIRMAN TODD SMITH: Okay. Let me just
say, thank you, I appreciate the spirit of your testimony. That's far closer to being the kind of oppositional testimony that I expected and I was a little surprised by Ms. Trautman's allegations that there is no evidence of any kind of voter fraud of any kind.

You do not agree with her on that; is that correct?

JUSTIN LEAVITT: I do not agree with her on that. That is correct.

I don't know about Harris County in particular. I have no experience in Harris County.

CHAIRMAN TODD SMITH: I understand that but the fact is that there is substantial amount of evidence of voter fraud, but your position is that only a handful of substantiated cases exist with regard to impersonation; is that correct?

JUSTIN LEAVITT: That's correct.

CHAIRMAN TODD SMITH: There's an extensive body of evidence to support the notion of fraud with regard to absentee-ballots?

JUSTIN LEAVITT: That's correct.

CHAIRMAN TODD SMITH: And so while we're on that subject: Do you have any suggestions on how this committee might be able to get at the area of...
fraud where there is no disagreement that is out there and is a major problem? Any suggestions on what we do to deal with that?

JUSTIN LEAVITT: It is a very sticky issue. Federal law actually provided one way to get at that and I believe that the rate of absentee-ballots has dropped substantially since 2002.

The Help America Vote Act of 2002 requires and Texas, I understand has implemented, a system that in some ways catches absentee-ballot fraud. When you register to vote you're required to give information over.

The Secretary of State will try to match that information up to other government lists. If you don't match, then you have to submit some form of identification of the same identification that is now permitted at the polls understand Texas law.

CHAIRMAN TODD SMITH: Did you identify a state that's currently doing that?

JUSTIN LEAVITT: I believe every state, including Texas --

CHAIRMAN TODD SMITH: Okay.

JUSTIN LEAVITT: -- is currently doing that.

CHAIRMAN TODD SMITH: Okay.
MR. LEAVITT: And so another way to get at

--

CHAIRMAN TODD SMITH: I'm obviously looking for something that we do not currently do because we've got dead people voting.

Even if you presume that all those people are doing it by way of absentee-ballots, which I don't know that we can, but even if you did that, you know, you how can we prevent that?

JUSTIN LEAVITT: Two items really quickly.

One, I'm not sure that you do have dead people voting in anywhere near the numbers that are often sited.

You mentioned earlier a Georgia study in the Atlanta Journal Constitution. That one's notorious. It came out in 2000 and said 5,400 dead people voted.

They actually did an investigation have the way they came up with that which were a record matching system that we've shown repeatedly to be fraud.

We mentioned one person that the reporter was dead certain had voted while deceased. And they went back and -- that's why I mentioned the poll book signatures.
They went back and they looked at the poll book signatures and it's not the same guy.

CHAIRMAN TODD SMITH: So what is the evidence that you agree is out there that is extensive with regard to absentee-ballots?

JUSTIN LEAVITT: You have situations like in Indiana, where there was some absentee vote, coercion of absentee-ballots, where there was people applying for absentee-ballots. That was before 2002. That was before the Help America Vote Act was implemented.

In Miami, the same thing in 1997, before the Help America Vote Act was implemented. The Help America Vote Act was actually done quite a bit to get at that.

But the other way you can avoid more absentee-ballot fraud is to make it as easy as possible while still maintaining the security of voting at the polls.

That is the harder you make it to vote at the polls, the more people you're going to get driven to the absentee-ballot system. And the more people you're going to lay out there into the system where it's much harder to actually control against fraud.

CHAIRMAN TODD SMITH: Okay.
MR. LEAVITT: At the polls you actually have a reasonably set reasonable set of safeguards, including people showing up in-person and swearing, including signing in, including your being able to see their face.

Including the idea that as you mention the ID that Texas currently requires, either a registration certificate or one of the broad means of documentary ID.

CHAIRMAN TODD SMITH: Okay. You mentioned the study that you did do, and it's 2.6, 2.9 percent. You know the study what I'm talking about?

MR. LEAVITT: There are several. The one that we did --

CHAIRMAN TODD SMITH: I just want to get your specific answer.

Was that from comparing in Indiana that has no state identification that has no identification requirement? What's what was the comparison?

MR. LEAVITT: We have not done a comparison. What we've done is we have --

CHAIRMAN TODD SMITH: What is that two point something percent figure? What was that?

JUSTIN LEAVITT: I believe that was a study done by -- it's possible it was Al Foretto
CHAIRMAN TODD SMITH: It was comparing what to what?

MR. LEAVITT: It was comparing -- I'm sorry. That study are was not a comparison study state to state.

I'm going to leave that question, if I may, for one of the other witnesses who will know this better.

CHAIRMAN TODD SMITH: Okay.

MR. LEAVITT: I am not sure.

CHAIRMAN TODD SMITH: Okay.

JUSTIN LEAVITT: We have done studies of the rate at which citizens have or don't have this, not the turn-out before or after a particular election.

CHAIRMAN TODD SMITH: Okay. You agree with me that in terms of the effect of Indiana versus some common standard, I thought that the Brennan study compared it to a no-identification state. That their study was, kind of, all over the map. Some say it increased turn-out. Some say it decreased turn-out.

JUSTIN LEAVITT: Yes.

CHAIRMAN TODD SMITH: But you agree with me that there isn't any evidence of any kind, nothing, no study, nothing substantiated to any degree that
would suggest that a change from current law in Texas where we already require identification, either one photo or one non-photo -- when those people just layout a photo to change in the law where you didn't have the photo which was provided free or you back it up with two forms of non-photo, a Voter Registration card or some form of additional document, you agree with me that there's not any study of any kind that will indicate that that would suppress poor, uneducated and minority voters? Right? You agree with me?

MR. LEAVITT: I can't agree with you, in part, because I don't know all of the details of what was submitted in Arizona.

Arizona has a system where you submit one photo ID or two forms of non photo ID.

CHAIRMAN TODD SMITH: Okay. You're not aware of any?

JUSTIN LEAVITT: Correct.

CHAIRMAN TODD SMITH: Is that correct?

JUSTIN LEAVITT: That's correct.

CHAIRMAN TODD SMITH: Okay.

I want you to just explain to me in a little more detail and then I want other members to ask questions.
You admit that it's hard to find in terms of hard to prove evidence of voter impersonation?

JUSTIN LEAVITT: It won't be hard. It will be hard to prosecute but I don't believe it will be hard to find.

CHAIRMAN TODD SMITH: Okay. Hard to prosecute.

And with regard to voter fraud -- you agree with me that looking at the extent of prosecution is really not the most accurate way to try to determine the extent to which it occurs in you agree with that, don't you?

JUSTIN LEAVITT: Yes.

CHAIRMAN TODD SMITH: Now, the absence of prosecution does not mean that it does not occur? But on the other hand, I will grant you that the absence of prosecution doesn't mean that it does occur, either? You agree with that, right?

JUSTIN LEAVITT: I think that's accurate. I think there are better metrics, that I know whether it does or does not occur.

CHAIRMAN TODD SMITH: All right. And when you say there's always a paper trail at the polls, help me understand that.

Because my understanding is that and I may
be wrong, that with regard to absentee-ballot, you've got a much better paper trail because you have an envelope. You have an address. You have a stamp.

Whereas at the poll, you primarily have a signature, whereas on the absentee-ballot, you have that, plus you have the envelope and a stamp and the typewriter that typed the information on the outside of the envelope, well, I guess most of the time that is a state issued document.

So I guess you have a stamp and you have a signature and you have an address.

Tell me why -- is it true that that paper trail is more extensive than the paper trail at the ballot office?

MR. LEAVITT: That paper trail is mildly more extensive, but the paper trail at the polls is more than enough to tell you did somebody vote in that person's name are or not.

CHAIRMAN TODD SMITH: Okay.

MR. LEAVITT: And that's what we focused on.

CHAIRMAN TODD SMITH: Okay. So because there is a more significant paper trail with regard to absentee-ballot, you would agree that it is, at least, marginally easier to identify and prosecute than it is
at the polls?

MR. LEAVITT: Yes.

CHAIRMAN TODD SMITH: Okay.

Representative -- hands up. I'm trying to be fair here.

Anchia.

REPRESENTATIVE ANCHIA: I want to be real careful when we talk about dead people voting, Mr. Chairman.

I don't know that there are any studies post-HAVA that show that that's happening at any rate greater than the rate of voter impersonation, which is pretty small can you talk about why dead people voting is hard. And let's leave the obvious because they're dead out.

But let's talk about why it's hard to vote for a person when he may be deceased using their identity. Let's talk about the mechanics of that and then let's talk about the mechanics of HAVA and how it's implemented in Texas.

Are you aware of how its implemented here?

JUSTIN LEAVITT: I believe so.

REPRESENTATIVE ANCHIA: Okay. And if you can speak to that, that would be helpful. Because I don't want the impression to be left with the media or
the audience or the members of the committee that this is happening on a large scale post-HAVA.

JUSTIN LEAVITT: No. That's entirely right.

And one clarification, if I may: That the reports that have been done post-HAVA, of which I'm aware, deal with allegations that dead people have been found on the rolls or that dead people have voted.

And when there's been follow up, I know there's a notorious case, the Texas Watchdog blog and then the Dallas Morning News, that when there's been follow up, the follow-up have actually been that dead people have not voted.

That is, there are lots of claims, but the claims actually turn-out, for the same reasons as in Georgia, not to pan out on photo investigation.

So you'd ask: How is it possible or how does Texas and other states safeguard against this?

When you register to vote, you have to submit your driver's license or Social Security number, and that information is matched up from place to place with Department of Public Safety here in Texas and with Social Security Administration records.

So if I'm a new voter and I am submitting
a ballot in the name of a dead person, then I have to
register in the name of that person. The information
has to be cross-referenced.

And by the way, Motor Vehicles and DPS
would most likely know if I'm deceased. If that
doesn't square up, if that doesn't match or if it
returns, hey, this person's dead, then I have to submit
a document, just like the documents that Texas
currently requires at the polls in that person's name.

And that's, actually, fairly difficult,
or, at least, it takes a great degree of energy in
order to fake.

And so there aren't a lot of people
registering in the names of dead people and
voting since the Help America Vote Act.

There also aren't a lot of people who are
voting in the names of people who have been dead on
the rolls for a long time.

HAVA also requires counties and the state
to screen their registration lists against the list of
people who have recently died. They get those lists
from Social Security. They get those lists from, I
believe, county departments of health.

And as far as I can tell, many states have
I'm not sure how Texas' compliance with this has been,
I just don't know but many states are finding it entirely impossible to get dead people off of the roles fairly quickly after they actually pass on. And so for those people, as well, if they attempt to vote, they're no longer registered. They're no longer on the rolls and that ballot is automatically flagged or at the polls they won't be able to cast a regular ballot.

So the Help America Vote Act provides in each of these ways have. New people getting on and old people coming off. A good screen for those who are no longer eligible.

REPRESENTATIVE ANCHIA: Would you be surprised if the latest State Auditor Report that scrubbed the HAVA database found that there were zero persons reviewed from that database who were deceased who had voted?

MR. LEAVITT: I wouldn't be surprised at all. We keep going back and finding where dead people had voted and the follow-up shows that zero have actually cast ballots.

REPRESENTATIVE ANCHIA: In fact, there were 49,000 people reviewed from the list to about 23, 25,000 of them were deceased, which is not a surprising number when you consider we've got 13
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1 million people on the list and people do die during the course of the year. Registered voters do die at .04 percent.

So about 23,000 people who are deceased and possible felons were scrubbed from the list.

And the number who have voted were zero.

JUSTIN LEAVITT: That's consistent with what they found in other states.

REPRESENTATIVE ANCHIA: And I believe the instance or the frequency with which we update statistics are, in some cases, weekly and other cases monthly under the law here in Texas. I'll confirm that with the Secretary of State's office, but we appreciate your testimony. Thank you.

CHAIRMAN TODD SMITH: Representative Bonnen.

REPRESENTATIVE BONNEN: Thank you. I appreciate your comments very respectfully in opening testimony of today.

CHAIRMAN TODD SMITH: Thank you.

REPRESENTATIVE BONNEN: Do you live in New York?


REPRESENTATIVE BONNEN: Even better.
That's very surprising for a New Yorker.

I wanted to ask you some questions about, again, it's an issue that I've been very curious about and you visited about how there are no studies and the impact the studies would have the impact that a Voter ID would.

And what's interesting to me about that is that we do have states we can look at where we can just look at the numbers. I mean, we don't have to do a specific study. We just look at results.

Are you familiar with the turn-out situation in Georgia? And I want to quote some numbers to you here and see if they make sense to you.

This is the Joelette Center on Political and Economic Studies. With that Georgians saw that the overall turn-out in Georgia increased 6.7 percent points from the 2004 election. It was the second-highest increase in turn-out of any state in the country in that the black share of the statewide vote increased from 25 percent in 2004, and this is obviously 2008 numbers.

The interesting thing about that is that they're talking about 25 percent. And that is, when the ID law was in effect, if went up 25 percent. To -- up to 30 percent in the '08 election.
The interesting thing is that the African American vote nationwide increased from 11 to 13 percent in that cycle.

So, I mean, does that sound logical to you?

JUSTIN LEAVITT: It absolutely sounds logical, but its sound like it has nothing to do with Voter ID.

REPRESENTATIVE BONNEN: I think that's a great statement.

MR. LEAVITT: Let me say two things if I can.

One, just -- Chairman Smith asked me whether I knew about the effects of particular ID structure one photo ID or two non-photo IDs, and that's where I'm just not aware in Arizona.

There are studies that show in effect a disproportionate impact on those with lower income.

Photo ID laws, in particular, those are photo ID because that's been the controversy.

REPRESENTATIVE BONNEN: I respect that. But I'm asking you about specific, factual results from Georgia.

JUSTIN LEAVITT: And leave, and the Georgia election, this is why gauging an effective law
based on turn-out is a disadvantage. The Georgia
election in 2008 featured an investment of resources
by both President Obama and by Senator McCain,
challenging Georgia and making it a contingent state
for the first time, as I'm aware, on the presidential
level in decades.

We also had -- for the African American
turn-out, they also had an African American caused at
the very top of the ticket. I would expect for the
African American turn-out to go through the roof in
Georgia.

REPRESENTATIVE BONNEN: Correct. Let me
point out, though, we're not talking about how many
individual numbers it went up. It's about percentage
increase, isn't it?

MR. LEAVITT: And I would argue with you.

REPRESENTATIVE BONNEN: I'm not arguing
with you. I am agreeing with you. Voter intensity
should have been higher. African American voter
should have been higher. Significant dollars would
have been spent on a different cycle, but to suggest
that they were specifically different at one point
versus another.

JUSTIN LEAVITT: And I'm not suggesting
that.
REPRESENTATIVE BONNEN: It is interesting. That's why I pointed out that the national vote increased for African Americans 11 to 13 percent, whereas in Georgia it went up 30 percent.

JUSTIN LEAVITT: And I attribute that to the very specific local nature of the election. The more money you spend in a local race and the more intention attention you have on a local race -- that can really drive turn-out.

REPRESENTATIVE BONNEN: Right. Let me make this point, then, with two things I'd ask you to consider: Clearly Voter ID did not suppress or amend the vote?

JUSTIN LEAVITT: I'm going to make the same express as Chairman Smith: We don't yet know, this is why it's dangerous, whether the increase in turn-out would have been 35, 40, 45, 50 percent had it not been for the Voter ID law.

That is, we know it went up a bunch. We don't know how much more it would have gone up had there been no law.

REPRESENTATIVE BONNEN: Well, we know it went up significantly compared to the national average. We know that it went up significantly compared to a neighboring state with no Voter ID such
JUSTIN LEAVITT: Which was not contested.

REPRESENTATIVE BONNEN: Correct. But we also then know by your comments, I think it's fair to not concede on both sides, that -- and I'm not picking a challenge here -- but Representative Anchia made the comment earlier about how Texas has bad voting numbers and this and that.

But the arguments you made were what came to my mind was when Representative Anchia discussed, that is, that I don't know the last time that we had a November election that we've had a presidential candidate spend any significant sum of money to drive the election.

So I think you would agree with me it's, kind of, fair to concede to some extent on both sides that it is largely driven by who's spending the dollars? Who's driving the vote? Who's making those requests?

JUSTIN LEAVITT: That's true, but I would say two things: One, you don't want to do anything. I agree this is my perspective. You don't want to take a step that drops your current level of participation.

And the second thing is: You don't want
to put any additional unnecessary burden on voters who
haven't participated thus far with the amount right
amount that want to come into the process.

REPRESENTATIVE BONNEN: And I understand
that.

JUSTIN LEAVITT: Secondly that nobody here
wants to put that unnecessary burden on.

REPRESENTATIVE BONNEN: I understand that.
I'm simply making a point that you're explaining the
Georgia turn-out numbers by the amount of money being
spent in Georgia. And I respect that. And I think
that has an impact.

But I do think it also helps show that
Voter ID clearly did not stimey that vote.

But I also would respectfully say that
then if we're going to accept that argument in Georgia
to some degree, not completely, but to some degree, do
we have to accept are the converse to that argument
when you look at other states, such as Texas and what
have you and say, well, but the vote wasn't as high as
we would have thought?

Again, if it's fair to you, it's fair to
me, I guess is the point I'm trying to make.

JUSTIN LEAVITT: And I understand the
point you're making. I guess I just disagree with the
REPRESENTATIVE BONNEN: The premise, you're saying the reason it went up in Georgia is because they spent a lot of money on the presidential election, but then when we discussed in other states that wasn't inundated with presidential dollars at that point you wouldn't apply there?

JUSTIN LEAVITT: There are probably 20 to 30 different factors that draw a turn-out, including the weather on a particular day. And respectfully you've gotta look at them. And in Georgia, you've gotta look at them.

REPRESENTATIVE BONNEN: Well, I think we do agree.

MR. LEAVITT: Okay.

REPRESENTATIVE BONNEN: I think we do agree that you can't hang your hat on that being the factor for it not having a negative impact in Georgia, just as I can't hang my hat on it being a having a negative impact or not in Texas.

What I'm simply saying, the arguments are somewhat a friendly stand off. If you're going to use it in Georgia, I suggest you ought to use it elsewhere?

JUSTIN LEAVITT: They do have a different
turn-out somewhere, but that's why we think it's so important to survey eligible citizens to find out who's out there who either does or does not have the sort of ID you're talking about.

This is my primary agreement with Chairman Smith.

REPRESENTATIVE BONNEN: Right.

MR. LEAVITT: Yes.

REPRESENTATIVE BONNEN: And I agree with you. I think when you have a voter increase from, Nationally speaking, with the African American population from 11 to 13 percent, and then you have a state that has a 30-percent increase, clearly there wasn't something creating a problem.

Because there are other states that probably had significant funds being spent to encourage turn-out that didn't even have that kind of a turn-out?

MR. LEAVITT: I think the record on what caused the turn-out and what did not cause the turn-out and where it might have been is probably going to have to wait for another couple of cycles until we get another data on how to hash out -- bonus I think that's a fair comment to make if we're going to hold that comment true in all scenarios.
MR. LEAVITT: Thank you.

CHAIRMAN TODD SMITH: Representative Brown.

REPRESENTATIVE BROWN: Thank you, Mr. Chairman.

I'd like to go back to something that you were explaining awhile ago about when you -- okay. Let me put it this way: Are you aware that when you send in a request for a change to a Voter Registration card and your information is not complete, for one reason for another -- oh, well, the main thing is you were saying that you fill in your Social Security number and your driver's license number.

Are you aware that if you leave both those boxes blank and send it in, they will send it back to you saying that it's insufficient information? If you did it a second time, they will send you another letter. If you did it a second time, they automatically register you?

Are you aware of that in Texas?

MR. LEAVITT: I'm glad to hear that's the case. That's one interpretation of federal law and that is one of the interpretations that we actually advocate for.
REPRESENTATIVE BROWN: Really?

JUSTIN LEAVITT: However, for those people, federal law requires that you have to show some form of documentary I.D. at the polls.

REPRESENTATIVE BROWN: Okay. All right.

JUSTIN LEAVITT: From leave. From the broad list --

REPRESENTATIVE BROWN: Okay. All right.

Are you aware in that that's a letter that's sent back telling you that you have insufficient information and you cannot be registered, that that is used as a form of identification? That letter can be presented?

The Secretary of State is here in the room, and she verified this the other day when she testified before us. So to me, that is the real.

JUSTIN LEAVITT: I'm not aware of how often that's done at all. I was not aware that that was the case under Texas law.

REPRESENTATIVE BROWN: Yes, it is.

One other thing. I just think that -- we're accused so much of trying to suppress the vote, that that's the only reason that we're pressing for photo IDs and trying to suppress the vote.

But wouldn't you agree with me that in the situation that was just cited a while ago, it was a
30-percent increase in turn-out, in a state that has photo ID, that we are really a miserable failure if that's our goal, going into these states and supporting photo ID, if the turn-out is that much, that we are really failing miserably?

MR. LEAVITT: I do believe that some who advocate this, and I certainly wouldn't accuse any member of this committee of being in that camp.

REPRESENTATIVE BROWN: Thank you.

MR. LEAVITT: But there are some who do believe that this is a means to suppress the vote, however successful, and I believe that more people sincerely believe that they are trying to combat a problem that's out there.

It's just that I happen to believe that they're mistaken.

In the Georgia case, for example --

REPRESENTATIVE BROWN: I asked you: Do you agree with me that we're a miserable failure in such states when the turn-out goes up that significantly?

MR. LEAVITT: The problem with the turn-out study is you don't know how much more it would have gone up if that idea hadn't been in place.

REPRESENTATIVE BROWN: But when you're
comparing it to other states with an 11-percent increase, it was such a significant increase. It was still and you still won't agree with me?

JUSTIN LEAVITT: I'm afraid I wouldn't. I mean, Georgia had many problems before this election. Their turn-out rate was not that spectacular leading up to this election.

To find an improvement, I think we can all be happy about the improvement, based on this election and the fact that more eligible Georgians are voting. I celebrate that.

I just simply don't know how many more people would have been able to vote if that law or any other law hadn't been in place.

CHAIRMAN TODD SMITH: And I think I've already made it clear that I think we're on the same page on that issue.

I am sort of fabulously unimpressed with either sides' arguments, especially that this marginal change in our states law, in our state, comparing what we currently do to what the Senate has proposed doing. I am fabulously unimpressed with either sides argument that this legislation would in any material way either enhance or suppress turn-out.

And you know, we have agreed that there's
not any evidence of any kind that is credible in any way that would support either of those allegations at this point, right? You would agree with that?

JUSTIN LEAVITT: I would think the turn-out studies have been inconclusive and that I would agree.

CHAIRMAN TODD SMITH: And those studies have all been based on a comparison between one thing and another, that is far more stark in its contrast than what we're proposing here in Texas, if we start with the Senate Bill.

JUSTIN LEAVITT: I believe that's right. Colleagues know their studies better than I. I don't think it's right to say that there's no evidence that what Texas is proposing would have an effect, though.

And that's where I'm afraid will have to differ. The turn-outs to these have been to date, that's right. They have been absolutely inconclusive. The studies of both registered voters and eligible citizens who do or don't have a certain type of ID over -- that provides for me a more reliable basis of evidence of saying who is this really going to effect.

CHAIRMAN TODD SMITH: And you agree that...
by providing a non-photo alternative, in addition to what other means we can take would significantly lessen any marginal additional burden on some voters? You agree with that?

MR. LEAVITT: I do. I think it's an unnecessary but relatively positive step.

CHAIRMAN TODD SMITH: Okay. And you agree, also, if the goal is to insure with regard to these provisional ballots, that is, many of them that should count, do count, do you agree and are you familiar with the way that Florida handles those provisional ballots?

And I get this from the descending opinion in the Supreme Court, where they go out of their way to praise Florida in the way that they handle the provisional ballots, not necessarily the legislation, but the way that they handle the provisional ballots, they go out of their way to strike a distinction between Florida and Indiana.

And they refuse to go so far as to express the statement that they would find the law in Florida constitutional. But in my opinion, they certainly apply that they might very well, even the most liberal dissenting justices.

Because of the fact with regard to those
provisional ballots, instead of them not counting, unless you go through hoops by going downtown within ten days of the vote, they count automatically without the voter doing anything else, unless a group of six committee determines by a majority vote that this is not the vote of the person who cast of the ballot?

Do you agree with me that the difference between one route and the other route is material in terms of minimizing any adverse consequences that you figure in this legislation?

MR. LEAVITT: I have been cautioned on many occasions not to jump to quickly to phrase Florida's election system and I believe with cause.

That said, there are all sorts of problems that provisional ballots themselves cause. And create. And I believe you'll have other witnesses to testify about that as well.

It is unquestionably better to have a system in which provisionals automatically count than a system in which they don't. And the Department of Justice actually required that of Florida. That was condition under which they would declare Florida's rule when Florida changed its laws, was that those provisional ballots had to count.

There are still other states, in fact,
many other states, that have their election deemed
their election systems secure without relying on
provisional ballots that accept a broad range of
documentation and then accept that that person is who
they say they are.

Provisional ballots -- I worry about the
consistency with which they're counted. I worry about
the rates with which they're counted. I worry about
the time and expense that it takes to count them.

And so I would caution about over-reliance
on them. That said, it's better than the alternative
where they don't count at all.

CHAIRMAN TODD SMITH: Representative
Bohac.

REPRESENTATIVE BONNEN: Justin, welcome.
JUSTIN LEAVITT: Thank you very much, sir.
REPRESENTATIVE BOHAC: I've enjoyed your
testimony before in front of this committee. I have
just a quick question for you.

What if we could put the photograph of the
individual on the voter card?

JUSTIN LEAVITT: On the Voter Registration
Certificate you mean?

REPRESENTATIVE BOHAC: On the Voter
Registration Certificate. Because we really do have
Voter ID now. I mean, we do, right?

JUSTIN LEAVITT: Yeah, you require one of the broad range of documents in order to show your identity. That's absolutely right.

REPRESENTATIVE BOHAC: But we just don't have photo ID now?

JUSTIN LEAVITT: But we do have Voter ID.

REPRESENTATIVE BOHAC: What if we could take the person's photograph and put it on the Voter Registration Certificate? Would that be acceptable to you?

MR. LEAVITT: If you're going to require that Voter Registration Certificate and didn't allow other documentation, I'd have to come back and say, no, that, too, would be an improvement. It would help as Andrew Young, as Ambassador Young mentioned, it would help other people get identification when they don't currently have photo ID.

I would worry a little bit there, too, about the cost and expense and administerability.

But the point that you make about Texas' current system, I think, is entirely valid. Texas has a voter law today that requires people to show one of a range of documents, and it requires you to show your registration certificate if you have it, and if you
don't, it allows you to arrive with any number of others.

Putting an ID on a Registration Certificate is great if you've got that Registration Certificate on you. But Texas law very sensibly today says if you don't happen to have your Registration Certificate on you, we'll allow you to vote with one of these other forms of ID. And I think that current safeguard is a sensible safeguard that Texas has decided on.

So putting a photo on -- if you require that that be the only ID that the voter can present, then I would think that would cause problems, just like requiring just a driver's license, just like requiring just any single kind of ID.

REPRESENTATIVE BOHAC: What if we assume for a moment that everybody did have a voter card. Would putting the photograph on that and making that the sole item that you could present to vote and everybody has one and they always have it on them -- would that be okay?

MR. LEAVITT: It's hard to answer questions about a fictional system or a hypothetical system.

REPRESENTATIVE BOHAC: I appreciate the
question. You're testifying on a fictional system now.

I mean, the whole testimony is based on a fictional system that we may or may not implement.

MR. LEAVITT: Which is why I try to keep my testimony as grounded in real fact that we've investigated as I possibly can. Talking about the studies that have been done. Talking about the rates of fraud that we have seen.

It's very difficult to say, you know. If everybody had the sort of ID that were required and everybody carried it were them at all times and everybody showed it to a co-worker and nobody were sent home without being able to vote as a validate caused, then I wouldn't be here because I wouldn't be concerned about that system.

But I'd be very concerned that if you put a rule like that in place, it would not be implemented such that everybody had and everybody carried and everybody presented and everybody got to vote.

REPRESENTATIVE BOHAC: If they could -- and this is my final question to you, let's assume that everybody had one and there was a photograph on the registration card, that that was the medium we used -- would that make competence in the system
greater or less than or the same?

MR. LEAVITT: The only evidence that I had seen about voter confidence in the system shows that it would not matter. The only evidence that I have seen is the study the very same state that Representative Anchia decided.

It was a national study. It was done with significance assistance. It was a national study and it was done all over the country.

And it said, how do you feel? How confident do you feel that there's been no fraud? How confident do you feel that there's been no registration fraud? How confident do you feel that there is no impersonation fraud?

And I asked the question five different ways. And they found no correlation whatsoever between the type of ID people were asked for and how confident they felt.

So if you asked me would that make people feel more secure, the only data that I have says people would feel exactly the way they feel today.

REPRESENTATIVE BOHAC: Thank you, Mr. Leavitt. I appreciate it.

CHAIRMAN TODD SMITH: We're at 35 minutes now.
Mr. Heflin, do you have a quick one?

REPRESENTATIVE HEFLIN: A few quick ones.

I think you gave Ms. Trautman seven minutes.

CHAIRMAN TODD SMITH: I think you've already used it several times.

JUSTIN LEAVITT: Mr. Fund testified ahead of schedule.

JUSTIN LEAVITT: I'm also happy, Mr. Chair, if you want to revisit some of the questions that you asked of Ms. Trautman, I'm happy to --

CHAIRMAN TODD SMITH: In order to be fair to the way this committee has been laid out, and I'm going much beyond the same amount of time that all the rest of the witnesses are going to have, but I'm going to give you some leeway.

Okay.

REPRESENTATIVE HEFLIN: Justin, have you read the bill that's before us today?

JUSTIN LEAVITT: I have.

REPRESENTATIVE HEFLIN: Now, as to the places mail-in ballots -- is there anything in this bill that would correct the possibility or probability of fraudulent or improper mail-in ballots?
JUSTIN LEAVITT: Not that I've seen.

REPRESENTATIVE HEFLIN: As far as to this bill -- is there anything that in this bill that will go beyond what we're doing today that would solve or improve the voter impersonation?

JUSTIN LEAVITT: No. I mean, I don't believe that voter impersonation could be a problem, no. I don't believe it needs solving.

REPRESENTATIVE HEFLIN: So, now, do you believe that if we go to the bill that we're proposing that's before us today, that there will be a substantial cost to produce an identification for every citizen?

JUSTIN LEAVITT: I believe there will certainly be a cost to produce the identification. I actually think your most serious cost is most likely to be in the sort of training that you had mentioned in earlier testimony.

You have now a system that's relatively straightforward, and under this system you'd be depending on a lot of co poll workers across the state, which is quite expansive to make a lot of choices individually about whether a document was or was not good enough or was or was not on the right list.
I don't know if studies have been done about the increased cost of training or has gone to a more complex system. When I worry about other additional complexities introduced, I worry that the costs are going to go up.

REPRESENTATIVE HEFLIN: Do you think that it would be difficult in the State of Texas under our current law for voter impersonation to take place with that one inept poll worker? Or cooperation from the poll worker? Would that be an unfair statement?

JUSTIN LEAVITT: No. I think that would be very fair. I think you have insider help, unless you have somebody who's not doing their job, which is in part why it doesn't happen.

REPRESENTATIVE HEFLIN: Do you believe that if we had the voter and they didn't have their identification at that time or came back, even came back with their identification that they signed an Affidavit saying they were, in fact, the person that they represented themselves to be would that disenfranchise voters or would that allow us to target potential fraud?

JUSTIN LEAVITT: I think it would allow you to actually target potential fraud and here's why: Affidavits, assuming that they're implemented
correctly, which is a big assumption. People have to know that the Affidavit is actually an option and that's been tricky.

Other states have used that sort of system and has said, essentially, if it's good enough for court, if it's good enough for you to swear to something before a court of law and we're going to make legal decisions based on that every day, then it's good enough for the vote.

And having accepted that Affidavit and having been able to follow up with it, there have been concerned about either identity or eligible because that's an additional paper trail that's available. And it doesn't send anybody home because as Representative Bohac was saying, everybody arrives with the means to sign that Affidavit.

REPRESENTATIVE HEFLIN: Let me give you two scenarios and answer which one you think would be the most disenfranchising.

If you went to vote and you saw a huge sign that said if you vote and you're not qualified, but to jail or if you were handed a card and says here's what you need to do to vote next time. An education process that would enhance voter participation as opposed to stop voter participation.
Do you believe you could actually disenfranchise through the negative at signages as I described?

JUSTIN LEAVITT: I certainly believe that there are ways to implement a program of trying to ward people away from the polls as ineligible, as well. Yes. I certainly believe you will get unnecessarily scared off depending how you do it.

There are ways to intimidate. Certainly there are many states that have seen their share of those through signage at the polls, trying to keep people away, even when they were perfectly eligible.

REPRESENTATIVE HEFLIN: Thank you for your testimony.

JUSTIN LEAVITT: One other note, very quickly on the Affidavit that you mentioned: Texas voters today, as I understand it, already swear that they are who they say they are.

And so to some degree, that paper trail is similar to what I'm talking about. The signature on the poll log, that already exists to some degree.

CHAIRMAN TODD SMITH: Representative Anchia.

REPRESENTATIVE ANCHIA: Sir, if we were to move to a photo ID requirement, you think it would be
important to avoid disenfranchising folks that people
could swear that they did not have ID in order to
vote, but that they were the person in the poll vote
or they were the person on their Voter Registration
Certificate in front of witnesses, the same kind of
Affidavit that they'd swear in court and then vote a
regular ballot?

Do you think that would avoid
disenfranchising people?

JUSTIN LEAVITT: To be very clear: I
don't want to recommend that you move to a photo ID
requirement. I don't think that it is necessary.

If you would choose to do so, I think that
would a very substantial safeguard. It's the very
system that the state of Michigan has implemented.

REPRESENTATIVE ANCHIA: And you'd be able
to go back and you'd have a signature on file. You'd
have witnesses who saw this person.

Heck, you could even take a picture of the
person at that point and say, okay, you don't have ID.
The state could furnish ID at that point to that
universe of people who had to swear the vote saving
provision, right?

JUSTIN LEAVITT: Yes.

CHAIRMAN TODD SMITH: This witness is at
39 minutes, and however long he goes is however long
every other witness for the rest of the day is going
to have. We're going to be here a long time.

REPRESENTATIVE ANCHIA: Can I ask you a
couple questions about the bill? You said you read
it.

JUSTIN LEAVITT: Yes.

REPRESENTATIVE ANCHIA: I was concerned
about a couple of the facets of the bill and the
workability.

The only notice provision I saw was in
Section 15.005. This is notice to the public.

It says that the notice was going to be on
the Voter Registration Certificate. And I went and
pulled my old Voter Registration Certificate and
looked at the back of it and looked at the font size.
And I think it's about in six point font right now.
Everything is in English and Spanish.

If you were to add notice on the back of
the certificate, the font size might go down to 3 or 4
point font.

Do you want to talk about any ADA
questions or HAVA questions problems there?

JUSTIN LEAVITT: There are certainly
administerability questions. This is part of why I
I get concerned. The more complex the law is, the more you have to explain to voters, the more you have to pack into very small print. The other extensive mailing.

I believe the bill also mentioned that there would be notice of the requirement on websites and I'm not sure how many people proactively checked the county websites.

Usually there will be things that we urge anyone passing new legislation to work out and test ahead of time to make sure that it is actually workable before you sign it into law. And that's a practice to we urge across the board.

REPRESENTATIVE ANCHIA: I think there are 250 counties in the state, and I believe 81 is websites, just out of, you know, I think those are the numbers that we looked at.

So, putting something on a website doesn't cover all the counties in Texas, and then there's the question about how many people have Internet access. And yet another problem.

CHAIRMAN TODD SMITH: All right. We're done.

Representative Anchia, you can stop.

41 minutes. We're going back to the original rule of
30 minutes each because one witness on one side was

cut off and you give his time to the other side.

I don't think anybody would suggest that

that's a fair way to handle this hearing. And I've

been trying to make sure that it's equally distributed

between witnesses on both sides. And to the extent

that we --

REPRESENTATIVE ANCHIA: I'm happy to be

here as long as we need to, so long as we're getting

questions answered. And I don't think you would

suggest that my questions are not relevant.

CHAIRMAN TODD SMITH: No. What I'm trying
to do is stick with the agreement that was had in

advance of the hearing that we would hear from all

these witnesses to an equal extent and be out of here

in time for people to get a night's sleep because of

the fact that we're going to be up all night tomorrow

night.

REPRESENTATIVE ANCHIA: I understand that,

but I think what we agreed to was with ten minutes for

each witness, but I don't think we agreed to any time

limit on the questions.

CHAIRMAN TODD SMITH: We agreed there

would be 30 minutes' of questions. That was the

agreement. Per witness. And this gentleman is at 40
now. Because apparently another witness on the other side of the issue wasn't here long enough to answer the full period of questions.

And I've allowed it, but I'm not going to allow it. We're not going to just take them one at a time and be here all night.

REPRESENTATIVE ANCHIA: I don't think that was universally understood as an agreement.

I understood there would be a ten-minute layout of the front and that was the agreement.

CHAIRMAN TODD SMITH: So you thought it was ten minutes and people would ask as many questions as they wanted to? You don't know why --

REPRESENTATIVE ANCHIA: As many questions as you deemed. That's right.

CHAIRMAN TODD SMITH: Well, that's not the agreement. So you misunderstood it.

We're going to have 40 minutes of testimony per witness, ten minutes to say whatever they want, and 30 minutes for the members on the panel. And I think I was quite clear in talking about all the members.

Because of that constraint, we're going to have to be respectful. You don't remember that discussion?
REPRESENTATIVE ANCHIA: Well --

CHAIRMAN TODD SMITH: Respectful of the members on the committee for everybody to ask the questions --

REPRESENTATIVE ANCHIA: I don't think my question's have been disrespectful of anybody, Mr. Chairman, including yourself.

CHAIRMAN TODD SMITH: No.

REPRESENTATIVE ANCHIA: I tried to be very respectful. I just think it enhances the process if we can get our questions answered, and I don't think there's any downside to it.

If you're going to cut me off, that's fine. But in the past, in any of our hearings in the past, we've never had this type of time limit of questions being answered.

CHAIRMAN TODD SMITH: Because we've never operated under the constraint of trying to get out of here by a certain period of time so that these members can have a full night's sleep before they stay up tomorrow night.

I think that was clear at the beginning of the hearing, Mr. Anchia, and it's applied equally to both sides.

It has been my intent to get out of here
by a particular time and make sure that the testimony
is evenly distributed and the number of questions
asked by both sides is evenly distributed.

That means --

REPRESENTATIVE ANCHIA: Are we behind on
your schedule?

CHAIRMAN TODD SMITH: Well, what we have
done to this point is taken some of one witness' time
on one side of the issue and given it to another
witness on the other side of the issue.

REPRESENTATIVE ANCHIA: But I still think
we're on schedule. If the goal is to finish by
midnight, I still think we're on schedule to finish by
midnight.

CHAIRMAN TODD SMITH: Well, do your
calculations in terms of the number of witnesses that
we have left on the proposal, which I have framed
which is 40 minutes per witness, and the count for
extra time for people like Ms. McGeehan to answer any
questions as a resource witness, and the extent your
questions, I'll be glad to evenly distribute the
balance of time between all the witnesses that are
here to testify today.

Thank you.

JUSTIN LEAVITT: Thank you.
CHAIRMAN TODD SMITH: I do appreciate your testimony, and I think all of the members of the committee were benefitted by your testimony. Thank you very much.

JUSTIN LEAVITT: Thank you very much. I'm also happy to answer additional questions in writing if the committee wishes.

CHAIRMAN TODD SMITH: Thank you. Thank you Mr. Leavitt.

At this time the chair calls Michael Ertel.

MICHAEL ERTEL: Good afternoon, Mr. Chairman. I'm Michael Ertel, supervisor of elections of Seminole County.

CHAIRMAN TODD SMITH: And you're here to testify neutral on Senate Bill 362; is that correct?

MICHAEL ERTEL: Right. I'm an election official. I, pretty much, try to think neutral. But I do want to start off by saying that I'm here for the Florida Elections Committee. I'm here to try to help.

CHAIRMAN TODD SMITH: Sure.

MICHAEL ERTEL: And everyone always wants help from Florida.

You know, it takes -- and I've been
listening throughout this and I've loved the serve and
the volley -- it takes a very long time to build a
good reputation, and it takes just one election, one
incident, one thing to ruin it.

I'm a Florida Elections Official.

CHAIRMAN TODD SMITH: How would you know?

MICHAEL ERTEL: I was not in 2000. I've
been here since 2005.

But, you know, I wanted to talk a little
bit about the process that you do and you had
mentioned it earlier, Chairman, and I think by the
way, that you've done a great job in reading the
articles preceding this. You've done a great job
being very measured about the process that you're
doing.

Because it's something that no matter what
anybody says, someone is going to claim that this leg
is trying to do this, and we're really just the guys
in this committee. With this hat on. In our role as
administrators, we're just the guys with the black and
white stripes on. We're not the referees.

So I wanted to talk a little bit about the
process that we use for provisional ballots. And you
mentioned earlier.

I brought a copy of one of our provisional
ballot envelopes. If a voter comes to the voting booth and they forget their ID, and let me actually back up.

In Florida on an application, you can state that you do not have a driver's license. You can state that you do not have a Social Security card. And you can still become a registered voter.

So you can claim that I have none of those and we can still register you to vote. We get you all signed up. We get your signature on file.

So then you go to the polls. And at the polls, let's say you still don't have that driver's license and you still don't have any other form of ID. You can still vote.

And through the provisional ballot method, it's our fail safe method. It's a method that insures that everybody has an opportunity to vote. It keeps our poll workers who work, one day a year, maybe two days a year.

It keeps our poll workers from having to make a snap decision from somebody that's standing in front of them that does not have an ID. And perhaps they're embarrassed that they don't have an ID because they forgot it at home.

Perhaps they've been told by somebody that
they can't vote because they don't have an idea and
they're just going to the polls.

They waited in line for 30 minutes and
they get up there and then they're told they don't
have an ID. So we let them vote. We always, always,
let them vote. But we gotta verify they have the
ability and the eligibility to vote. And the way we
do that is with our provisional ballot process, which
is a great process.

And as you'd mentioned before, it's one
that the voter themselves does not then have to come
back to our office and say, see, look, this is me,
this is me. They can simply go there, they fill out
their ballot, we've got a copy of one of our ballots,
not an official, a turn-in ballot.

They fill out the ballot. They put it in
this envelope. In the secrecy sleeve. They put it in
here. They seal it up in front of our poll workers,
and they fill out some information on the outside.

Our canvassing board, which each of our
election supervisors are a member of, unless we're on
the ballot ourselves. Our canvassing board, which
consists of a judge, a County Commissioner and the
Supervisor of Elections.

If any of the county commissioners,