

IN-PERSON VOTER FRAUD: MYTH AND TRIGGER FOR DISENFRANCHISEMENT?

WEDNESDAY, MARCH 12, 2008
United States Senate,
Committee on Rules and Administration,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in Room SR-301, Russell Senate Office Building, Hon. Dianne Feinstein, Chairman of the committee, presiding.

Present: Senators Feinstein, Schumer, Pryor, McCaskill, Bennett, and Chambliss.

Staff Present: Howard Gantman, Staff Director; Veronica Gillespie, Professional Staff; Adam Ambrogio, Professional Staff; Lynden Armstrong, Chief Clerk; Matthew McGowan, Professional Staff; Carole Blessington, Assistant to the Majority Staff Director; Justin Perkins, Staff Assistant; Mary Jones, Republican Staff Director; Shaun Parkin, Republican Deputy Staff Director; Michael Merrell, Republican Counsel; and Rachel Creviston, Republican Professional Staff.

OPENING STATEMENT OF CHAIRMAN FEINSTEIN

Chairman Feinstein. Before I begin my statement, I want to thank Senator Schumer, my colleague on this committee, for requesting that we hold this hearing. I look forward to his active participation, so hopefully he is going to be here very shortly.

I also want to commend Chairman Leahy, who will be testifying today, on his leadership on this issue. The Judiciary Committee and the Rules Committee both have jurisdiction over different aspects of these issues, and Chairman Leahy has been a leader in trying to ensure that the right to vote is protected for all Americans. I am pleased he is here today and I look forward to hearing his testimony, I know Senator Bond is here, as well, and I know Senator Bennett will have something to say about that.

A citizen's right to vote is fundamental to our democracy, so when there are allegations that the right to vote is threatened, we need to take those allegations very seriously. Sadly, at a number of critical junctures in our nation's history, legal roadblocks have kept certain vulnerable members of our society from voting. We know the heritage. Poll taxes, literacy tests, and requirements to own property were three of the most egregious.

Today, this committee will examine the realities of voter fraud and the proposed solution of requiring photo IDs. The committee will also examine whether there is, in fact, a real problem with vote fraud and what the real world impacts of voter photo ID requirements are. The Committee will look at how photo ID requirements could impact minorities, seniors, and persons with disabilities who don't have a current government-issued photo ID.

At today's hearing, we will get into a full and, I hope, robust discussion regarding to what extent there is in-person voter fraud, or to put it another way, are individuals going to vote pretending to be registered voters at the polls? I think getting to the bottom of this is important because, in essence, this is the only type of fraud that would be prevented by photo ID requirements.

That is why we felt it very important to have a witness from the Justice Department. We invited Mr. William Welch, Chief of the Public Integrity Section with responsibility for civil and criminal enforcement of such voter fraud, to discuss what the Department of Justice has found and to help quantify the problem of voter fraud at the polls. Unfortunately, DOJ refused to allow him to testify. Only after extensive back-and-forth between my staff and the Department did they finally send a letter stating that at some future date, they would provide an unspecified witness.

Another reason it would be important to hear from DOJ is that during the Bush administration, the Department put in place a major program called the Ballot Access and Voting Integrity Initiative, which focused on investigation and prosecution of voter fraud. It is my understanding that DOJ failed to complete any Federal prosecutions for impersonation voter fraud. I would like to know more about this.

In the void left by the Justice Department, we will rely on testimony by a former U.S. Attorney for the District of New Mexico, Mr. David Iglesias. He will discuss his experience with voter fraud cases and whether he found fraud to be a major problem in his District.

I also think it is important to note that this very issue is now before the Supreme Court in Crawford v. Marion County Election Board and Indiana Democratic Party v. Rokita. While we await the Supreme Court ruling, there are movements throughout the United States to enact laws that are as tough as or tougher than the Indiana photo ID requirement.

So I believe we need to start now to look carefully at the rationale for these laws and the impact on certain voters, especially since this is an election year and new laws could impact how people vote in just a few months.

In 2002, after vigorous debate, Congress passed the Help America Vote Act, which among other things became the First and the only Federal law to require a limited voter identification requirement for registration by first-time voters who register by mail. HAVA sought a balance between the need to ensure against fraudulent registrations by mail and the possible disenfranchising impact of voter photo identification.

In recent years, voter photo ID bills have been introduced in 30 State legislatures, including my own State of California and the Ranking Member's State of Utah. So far, only three States--Georgia, Indiana, and Missouri—have passed laws requiring a government-issued photo ID to register, vote, and count the vote. And one State, Arizona, has passed a law requiring voters to prove citizenship in order to register to vote.

I believe it is very important that we step back from this rush for legislation and examine both the problem of fraud and the proposed solution requiring voter IDs. A nationwide survey conducted by the National Opinion Research Corporation showed 11 percent of voting-age Americans does not have a current government-issued photo ID. That means approximately 21 million citizens could be adversely impacted under a restrictive photo ID requirement.

In recent years, we have seen how important every vote is, not just for local elections, but all the way up to the Presidency. So we should do everything possible to ensure that everyone who is entitled to vote is able to vote, and that is what this hearing is about today.

I would now like to recognize the distinguished Ranking Member with whom I have the pleasure to work, Senator Bennett.

OPENING STATEMENT OF SENATOR BENNETT

Senator Bennett. Thank you very much, Madam Chairman, and I will do my best to fill your desire that we have a robust hearing.

I appreciate the opportunity to examine this issue and I am convinced that there is a great deal that needs to be done to deal with vote fraud, which vote fraud is going on and vote fraud is current. It is not just a part of the American history. Those of us who have read the biographies of Lyndon Johnson, who was known as "Landslide Lyndon" when he came to the Senate because he won his race by 87 votes and it is very clear no one will ever know who really won that race, as he and his opponent kept adding fraudulent votes in a frantic attempt to see which one came out on top, and in the end, Lyndon Johnson came out on top.

That is in our past, but it is still very much in our present and I look forward to hearing from the witnesses. I would indicate that I have information here of 25 States that have current legal proceedings with respect to vote fraud, and without going through every one of them, I will just pick out a few here in my opening statement.

The Senator from New York has talked about this, and, of course, he must be familiar with the massive vote fraud operation that Elizabeth Holtzman, the District Attorney and later Congresswoman, uncovered and prosecuted with a blistering statement from her as to what needed to be done to stop this. She recommended in her statement voter ID as one way to deal with it.

In California--I picked California and Utah and Indiana, all of whom are part of our discussion here today-- in California--let me get to the Cs--a member of the Berkeley Rent Stabilization Board faces four felony vote fraud counts for misrepresenting where he lives. A couple in Fair Oaks has pled "no contest" to fraudulently voting in a school board election. These are as reported by the San Jose Mercury News and the Sacramento Bee.

In Indiana, a voter who claimed to be disenfranchised by the Indiana voter ID law was found to be registered in two States. In Lafayette, Louisiana, a former St. Martinsville councilwoman has been fined--the first one was the 2008 election. In the 2006 election, a former St. Martinsville councilwoman was fined \$2,000 and sentenced to three years' probation on Federal charges of rigging her 2002 election. She entered false addresses on registration cards so supporters for another district could vote for her.

In my own State of Utah, where we pride ourselves on not having a problem, it turns out in Daggett County, which is the smallest county in the State, an investigation into vote fraud has brought criminal charges against 51 people accused of lying about where they lived in an election for county sheriff, and several of those charged are the relatives of the winning candidate, who won by 20 votes out of the 594 cast.

So it is current. There are examples of it going on. There are people being prosecuted for vote fraud and I look forward to this hearing where we have an opportunity to get into more of this in detail.

I will end with that with my opening statement, but I have a great deal of additional information that I will be happy to present before the committee.

Chairman Feinstein. Excellent and thank you very much, Senator. Senator Schumer?

OPENING STATEMENT OF SENATOR SCHUMER

Senator Schumer. Well, thank you.

Chairman Feinstein. And I might say, this hearing is at the request of Senator Schumer and I am delighted that he is taking the time to sit with us today and participate. Thank you so much.

Senator Schumer. Well, thank you, Madam Chairperson.

I am so glad you have held this hearing. It is one of the most important jurisdictions, I think, of the Rules Committee, is to deal with this issue. And as a member as we both are of both the Rules Committee and the Judiciary Committee, which deals with the criminal aspects of this, I am glad to see our Chair, Senator Leahy, here. I am glad we are looking at this issue.

Now, I am very concerned about the possible proliferation of strict laws like the one recently passed in Indiana, which requires everyone to present a photo ID at the ballot box. The weight of evidence shows that these laws attempt to solve a problem that doesn't exist. You have to ask, then why are people pushing them?

They do so in a way, and if it was harmless we would say, well, it could just be a waste of time. But these laws do so in a way that threatens to create a new and worse problem, disenfranchisement of untold numbers of citizens, especially the elderly, the poor, and the infirm.

Now, one of the things we have tried to do is get from the Justice Department how extensive their prosecutions of voter fraud. When I asked FBI Director Mueller at a hearing in the Judiciary Department, he didn't have an answer. He was supposed to get us an answer before this hearing. We haven't gotten that answer.

The Justice Department was given a formal invitation. They have been touting a ballot initiative on election fraud for six years and it is regrettable they couldn't send somebody. I wonder why? Maybe there is not much of a record. Maybe they have fallen down on the job.

And I want to be very clear what our focus is here today and it relates to my friend from Utah's recitation of cases. We are not speaking generally about voter or election fraud. There are many ways that a voter could seek to vote fraudulently. But the only thing that a voter ID card does is deal with in-person fraud at the ballot box.

None of the cases cited by Senator Bennett were that type, not a one, and we are hard-pressed to find any, because just remember, if you are showing up and saying you are somebody who you are not, a voter ID will solve it. But if you put a false address in, a voter ID won't solve it. Those were the cases mainly cited by Senator Bennett. If you are duplicating names, it won't solve it.

So maybe there is some voter fraud. I think the case that he cited in Brooklyn, my good friend, Senator Bennett, came from the 1970s. It is pretty interesting that we are trying to solve a problem.

Senator Bennett. The eighties.

Senator Schumer. Nineteen-seventy-six, 1982, prosecuted in 1984. It started in 1976.

In any case--and that was not related to, again, the in-person voter fraud that this is supposed to deal with. We are talking about individuals who show up at a polling place and try to impersonate a registered voter in order to cast a ballot wrongfully. Everyone agrees we should have fair elections, uncorrupted by misconduct. But too often in these debates, people, sometimes intentionally, sometimes not, confuse and conflate all the different ways an election can go awry to justify a singularly worrisome pseudo-solution, the mandatory requirement of a photo ID at the ballot box.

I cannot state my concern any better than Judge Evans, who dissented in the Seventh Circuit case being heard by the Supreme Court. He said, quote, "The Indiana voter photo ID law is a not-too-thinly-veiled attempt to discourage Election Day turnout by certain folks believed to skew Democratic." Regarding the possibility of disenfranchisement and the lack of evidence that fraud occurs, Judge Evans wrote, "Is it wise to use a sledgehammer to hit either a real or imaginary fly on a glass coffee table? I think not."

Maybe Senator Bennett knows of some, maybe Senator Chambliss, maybe Senator Bond. I hope so, because after all, we should ask first what the scope of this problem is. If we are going down a road of burdensome hurdles to vote in the name of preventing a certain type of fraud, shouldn't there be some real proof that there is a problem to solve, especially when our most fundamental right involves the right to vote? Shouldn't we be basing our law and policy on fact rather than anecdote, supposition, and false premise?

On Monday, the FBI and DOJ told my staff they couldn't give us an answer to the question of how many cases of actual in-person voter fraud because they don't track general election fraud cases, and yesterday, the nominee to the head of the Civil Rights Department could not point to a single case in the last seven years--a single case where in-person voter fraud influenced an election.

Meanwhile, the nonpartisan Brennan Center has done an exhaustive case-by-case review of all 95 voter fraud cases brought federally between 2002 and 2005 and guess what they found? These may have been some of the cases my good friend from Utah cited. They found that none--not one, not two, not three--none of these cases was a case of in-person voter fraud that could have been prevented by an ID requirement.

So not only is there almost no evidence of in-person fraud, but the supposed solution risks a great deal of harm to voter participation. There is substantial evidence of the adverse effects of a strict photo ID on voting.

I know that there are witnesses here today who will suggest otherwise, and we will get to that. But the record determines there is a tangible negative effect, and it is not just people like Chuck Schumer who say so. It is not just a convenient conclusion come to only by liberals or Democrats. Consider some of the sources who have publicly acknowledged voter ID's suppressive effect on turnout, especially among Democrats.

Here is the statement of Royal Masset, the former political director of the Republican Party of Texas. "Among Republicans, it is an article of religious faith that voter fraud is causing us to lose elections," Masset. He doesn't agree with that but does believe that requiring photo IDs could cause enough of a drop-off in legitimate Democratic voting to add three percent to the Republican vote. That is not me talking. That is not Senator Feinstein. That is not Senator Leahy. That is the Republican political director of the Republican Party of Texas.

Here is Judge Richard Posner, hardly a leading Democratic liberal. He conceded the point in the Crawford case, even when he upheld the Indiana law. He said the Indiana law will deter some people from voting. That is Posner. No doubt most people who don't have photo IDs are low on the economic ladder and if they do vote are more likely to vote for Democratic than Republican candidates.

Beyond these individuals, as I said, the nonpartisan Brennan Center has been able to identify many times more cases of actual disenfranchisement of voters than of voter fraud--in-person fraud, focusing on that type of fraud.

And so given what we know from the record of the issue and given some of the statements that have been made, I worry and wonder why we are rushing to pass these photo ID laws. I worry and wonder about the motivation. I worry and wonder about the consequences, and I hope we will get some hard facts as we move forward today.

Chairman Feinstein. Thank you.

Senator Schumer. I am sorry for a long statement. As you know, I feel very strongly about this.

Chairman Feinstein. I understand that.

Senator Schumer. And I very much appreciate, Madam Chairperson, your holding this hearing.

Chairman Feinstein. Thank you. We won't put a time limit on the Senators, but we will put a five-minute time limit on the witnesses.

Senator Chambliss, would you like to make a statement?

OPENING STATEMENT OF SENATOR CHAMBLISS

Senator Chambliss. Well, thank you, Madam Chairman and Senator Bennett for calling this hearing, and thanks to Senator Schumer for his influence in that because it is a critical issue. I think there will be some enlightening facts revealed today that will indicate that voter fraud is an issue, unquestionably. I think we can all agree with that. Whether it has influenced elections or not, I don't know that we will ever know. In all probability, it has somewhere along the way, but it is certainly a difficult prosecution, at best.

I am here in part because I want to introduce to the committee one of our witnesses today, Deputy Secretary of State of the State of Georgia Robert Simms. Mr. Simms was appointed by Secretary of State Karen Handel on January 8, 2007, to serve as the agency's chief operating officer. Prior to joining Secretary Handel's team, Rob served as public servant at the county, State, and Federal level from Georgia to Virginia.

Most recently, while serving the State of Georgia, Rob has led the agency's photo ID team, which developed and implemented the Statewide comprehensive outreach and education efforts that have proven to be an essential factor in the Federal court case challenging the law and in the successful implementation of the law.

Over the years, our electoral system has been tested and tried, and at the State level has undergone a variety of changes. Last month, over two million Georgians cast their vote in the Presidential primary. Despite arguments that the photo ID laws discriminate against and disenfranchise voters and will keep a number of voters away from the polling place, less than two-tenths of one percent of those voters who sought to vote in the Presidential primary did not possess a photo identification.

As all of you are aware, the state of Georgia has been a hotbed for legal activity concerning our voter identification laws. As such, Mr. Simms has provided counsel to and testified in Federal court cases specifically addressing the issue of voter identification.

We know and we have validated that in Georgia, we have had voter fraud cases, voter fraud cases that could have been solved by an identification being required at the ballot box. And the reason we know that is it is not politicians that have validated that, but outside sources that Mr. Simms can address. If you have somebody who is deceased who is found to have voted, it is pretty easy to see that photo identification at the ballot box would have prevented that type of thing from happening. And unfortunately, we know that has happened in my State. We are not proud of it, but we have sought to correct that problem by requiring a photo ID.

Again, I thank you for holding this hearing and I look forward to the testimony of the witnesses, Madam Chairman.

Chairman Feinstein. Thank you very much, Senator Chambliss.

Today, we welcome Senator Patrick Leahy before this committee. Senator Leahy has served in the Senate for almost 34 years. He ranks seventh in seniority in the Senate. He currently serves as Chairman of the Judiciary Committee, of the Appropriations Subcommittee on State and Foreign Operations, and he is a senior member of the Agriculture Committee. He hails from Middlesex, Vermont, where he served for eight years as State's Attorney in Chittenden County. Welcome, Senator.

STATEMENT OF HON. PATRICK LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator Leahy. Thank you. Thank you very much, Madam Chairman, Senator Bennett, Senator Schumer, and Senator Chambliss. Thank you for letting me testify.

You know, as Chairman of the Senate Judiciary Committee, which has jurisdiction over constitutional and civil rights, I appreciate the opportunity to share my views on the subject you have chosen for this hearing, a very important one, whether the myth that voter fraud leads to voter disenfranchisement. Nothing is more critical to our democracy and to American citizenship than the right to vote.

My grandparents immigrated to this country from Italy and they told me--I remember as a young child they really felt that they were citizens when they first voted. My wife's parents immigrated to this country from Canada. They said the same thing.

It is fundamental because it secures the effectiveness of our other constitutional rights. The very legitimacy of our government depends on the access to the political process all Americans should enjoy.

But the way this administration and some of the partisans have pursued political advantage under the guise of fighting purported voter fraud, I believe that undermines our nation's core values, the core values that attracted my grandparents to this country. These efforts not only distract attention away from efforts to increase voter participation, they disenfranchise vulnerable communities.

Over the past several years, the Senate Judiciary Committee has compiled significant evidence that the pursuit of purported voter fraud is often a partisan tool designed to influence elections. The Judiciary Committee investigated the mass firings of U.S. Attorneys and the politicization of hiring within the Justice Department. We discovered evidence that senior White House officials focused on the political impact of Federal prosecutions in many States, including Wisconsin, Missouri, and New Mexico. Several U.S. Attorneys testified that they were pressured by political appointees and White House officials to file purported voter fraud and corruption cases.

In an April 2006 speech, Karl Rove identified key battleground States, and not surprisingly, political appointees in many of these same States were pressured to seek out and prosecute voter fraud cases, and many apparently losing their jobs when they did not. This scandal, this scandal of manipulating prosecutions, eventually led, as the distinguished Chair of this committee knows, to the forced resignation of the Attorney General for allowing such a scandal to take place.

A former political director for the Republican Party admitted among Republicans, as Senator Schumer pointed out, it is an article of religious faith that voter fraud is causing us to lose elections, and requiring photo IDs adds three percent to the Republican vote. This explains the willingness on the part of some partisans to corrupt Federal law enforcement for political gain.

I am pleased that Missouri's Secretary of State Robin Carnahan will testify today. She joined former and present Secretaries of State from Georgia, Maryland, Ohio, and my home State of Vermont, in a brief to the Supreme Court noting in that brief that, quote, "In Federal elections between 1996 and the present in which more than 24 million votes were cast, not a single case of voter impersonation fraud occurred at the polls." That is a remarkable fact and established in mythological nature the so-called problem of voter fraud.

Indeed, the Federal judge reviewing the Justice Department's suit against the State of Missouri concluded, it is telling that the United States has not shown that any Missouri resident was denied his or her right to vote as a result of deficiencies alleged by the United States, nor has the United States shown that any voter fraud has occurred. Our own committee found the political reasons why that suit was brought.

Despite lack of credible evidence, the myth of voter fraud has increasingly been used to justify policies that suppress political participation by passing laws that threaten to exclude millions of eligible voters with a disproportionate impact on vulnerable populations, such as the elderly, low-income, disabled, and minority communities. We should be instead focusing on expanding access to the fundamental franchise of voting.

As we proclaimed two years ago when Republicans and Democrats stood together on the steps of the Capitol in support of reauthorizing the landmark Voting Rights Act, we should be working on ways to overcome barriers to the ballot box and make sure all citizens have access to the political process. The Senate extended the Voting Rights Act by a vote of 98 to zero, and I wrote to all my grandchildren on that day and said this guarantees that all of them--all of them--will have the right to vote when they grow older. When the President signed the Voting Rights Act Reauthorization and Revitalization into law, he committed to aggressive enforcement of its protection.

The history of our democracy is one demonstrating that as people are able to register and vote and elect candidates of their choice, their interests receive attention and their other rights are protected. For far too long, our nation tolerated the gulf between our foundational principles and the voting experience for many Americans. We endured a shameful history of barriers erected around the ballot box. We made significant process toward a more inclusive

democracy by means of the 15th Amendment, which gave former slaves the right to vote, by means of the 19th Amendment, which said that women have the right to vote, by means of the 24th Amendment, which outlawed poll taxes that had been used to suppress minority voters, and by means of the 26th Amendment, ensuring that those 18 years old who have been called into military service to fight in the Vietnam War would then have the right to vote.

Now is not the time--my distinguished colleague is giving me musical accompaniment to my--I have never had that before.

Senator Bond. What is your favorite key here? [Laughter.]

Senator Leahy. But now is not the time to turn back the clock to the days of disenfranchising laws supposedly designed to protect the polls. The myth of voter fraud should not be used to suppress the democratic participation of the American people in choosing their elected representatives.

As we approach an important national election, fulfilling the promise of democracy requires a government focused on protecting voters who suffer actual disenfranchisement rather than allowing partisan tactics to be employed to suppress voter participation.

Denying a fundamental right, the right to vote, because a person is indigent or lacks a birth certificate or has no access to a vehicle, that goes against America's better values. As the world's model for democracy, we are a better nation than that.

My friend from Utah talked about Lyndon Johnson's race for the Senate. I wasn't here then, but I was here as a Senator in 1980 when, as he will recall, President Reagan swept the country and Republicans took control of the Senate for the first time in years. The closest election in America that year was Senator Barry Goldwater of Arizona. You may recall that he had lost his election on Tuesday, so they kept the polls open on Wednesday until he had enough votes to win. That did not create any problem for the new Republican majority in the United States Senate.

So I thank you for the opportunity to testify and I look forward to ensure that all Americans have unfettered access to the ballot this November. I ask that my full statement be included in the record.

[The prepared statement of Senator Leahy follows:]

Chairman Feinstein. Thank you very much, Senator Leahy. Senator Bennett will introduce Senator Bond.

Senator Leahy. And I apologize for leaving, if I might, Madam Chairman.

Chairman Feinstein. You certainly may.

Senator Leahy. I have a longstanding doctor's appointment.

Chairman Feinstein. I understand. Thank you very much.

Senator Leahy. Thank you.

Senator Bennett. Thank you, Madam Chairman. We welcome Senator Bond from Missouri. He was the Assistant Attorney General under Senator John Danforth, elected State Auditor in 1970, and at age 33 he became the 47th Governor of the State of Missouri and I think the youngest in their history. He was elected to a second term in 1980 and now continues his service to Missouri in the United States Senate.

I had the privilege of serving on the Governmental Affairs Committee when Senator Lieberman chaired a similar hearing on vote fraud and Senator Bond provided very persuasive testimony on that occasion and I look forward to hearing from him again here today.

Chairman Feinstein. Thank you very much. Senator Bond?

STATEMENT OF HON. CHRISTOPHER BOND, A U.S. SENATOR FROM THE STATE OF MISSOURI

Senator Bond. Thank you very, Madam Chair, Senator Bennett, Senator Schumer. I appreciate being allowed to participate today. I was a lead cosponsor of the Help America Vote Act because I have had too much experience with vote fraud.

Vote fraud is alive and well in America. The only question for us is are we willing to stop it and how do we do it.

One of the court decisions relating to fraudulent elections in Missouri noted that the fraudulent vote disenfranchises legitimate voters just as much as keeping them from the ballot box, because when you put in a fraudulent vote, you cancel a legitimate vote.

Unfortunately, we have had a long and undistinguished career of manipulated elections in Missouri. I experienced that firsthand when I ran for Governor in 1972. My opponent, through a friendly judge, kept the polls open in the heavily Democratic City of St. Louis well past the closing time. Their contention was that the Democratically-appointed election board in St. Louis was discriminating against Democratic voters in St. Louis and keeping them from voting. Well, they finally closed the polls after midnight when I had run up enough of a margin in out-State Missouri that was beyond the total population of St. Louis, and only then did they allow the votes to be counted.

We saw this same thing happen again in the 2000 general election. Again, there was a coordinated attempt to keep polls open late in the Election Day. A candidate for office in the City of St. Louis announced to his colleagues and friends and supporters that they would be keeping the polls open that day, and sure enough, they got a judge to keep the polls open and prerecorded telephone calls went out, prerecorded radio announcements went out telling voters that they could continue to vote until midnight. Fortunately, a court overruled those decisions and they shut it down.

But apparently keeping the polls open was not the only part of a prearranged organized conspiracy to manipulate the vote outcome. We later came to know that the lawsuit swearing under oath that a person was denied his constitutional right to vote was on behalf of Randall P. Odom. Mr. Odom had a bigger problem not being able to vote. He had died a year and a half before. So the lawyer who presented that petition said, oh, he meant Mark Odom, Randall M. Odom. Well, Randall M. Odom lived in St. Louis County and he had voted at 2:30 that day and was, in fact, on the staff of the candidate who said they were going to keep the polls open. Unfortunately, the discovery of a dead voter led to newspaper editorial cartoons describing a St. Louis voting booth to include caskets for the dead.

A post-election review of voter rolls revealed tens of thousands of persons found to be registered in more than one jurisdiction. That vote fraud foundation turned into vote fraud fact when we found records of hundreds of felons, non-residents, and those not legally entitled to vote in the election, in fact cast ballots.

Soon after, I introduced legislation to combat vote fraud by helping States improve voter roll accuracy, add mail-in voter registration safeguards, and give States more power to clear voter rolls. As the committee is well aware, the sorry state of America's 2000 voting practices spurred national action which resulted in the Help America Vote Act, signed into law in 2002. I was proud to take part in that effort to make it easier to vote, but harder to cheat.

After this, some say there is no need to go any further. The voting rolls have been scrubbed and everything is clean now. Sadly, this is far from true. One organization named ACORN, or Project Vote, is a professional vote fraud enterprise. In the last four years, ACORN workers have been convicted, discovered, or reported engaging in fraudulent voter registration in Wisconsin, Virginia, Texas, Colorado, Minnesota, Ohio, New Mexico and North Carolina. In 2003, ACORN submitted 5,379 voter registration cards. The Board of Election commissioners could only

find 2,000 of those appeared to be valid and at least 1,000 are believed to have been attempts to register voters illegally.

Last year, three ACORN workers in Kansas City pled guilty to Federal charges of vote fraud in the form of filing false voter registration paperwork. They were busy completing the first of two steps in any vote fraud scheme, and this is important. First, you get someone to file fraudulent voter registration paperwork. Then, step two, get someone to vote fraudulently based on that fraudulent voter registration, and that is where a photo ID comes in. Is that person the same person who is registered to vote?

The hearing today tries to convince us that we need only look at step two to determine whether vote fraud is occurring. The assertion is that the only true test of vote fraud is whether people are caught voting fraudulently in person. Conveniently, of course, this is the most difficult part of the equation, because if you do not know if the registration is fraudulent and you refuse to ensure through a photo ID that the person voting is not the person who filed the fraudulent voter registration, then it is almost impossible to catch in-person vote fraud.

Now, there is one person a photo ID requirement most certainly would catch in person. Here is the voter registration. This was the voter registration card of Ritzy Mekler of 4215 Utah Street in St. Louis, Missouri. As you can see, Ritzy's birthday is filled in, place of birth, her Social Security number. One might even conclude that Ritzy is left-handed because the slant of the letters is to the left. But if you had ever met Ritzy, you probably would know that she could not be left-handed, but she could be left-pawed. That is because Ritzy Mekler is a dog.

Now, here is a picture of me with Ritzy Mekler when she came to visit. I am the one on the right. As you can tell, it was an exciting day for Ritzy--[Laughter.]

Senator Bond. --smelling members, licking faces, getting free bones. We had a wonderful time. A well-behaved English spaniel. You know, I never even asked Ritzy whether she was a Democrat dog or a Republican dog.

Of course, stopping vote fraud should not be a Republican or Democrat issue. When vote fraud occurs, it dilutes the votes of Democrats and Republicans. It takes away the fundamental rights of Democrats and Republicans.

A good friend of mine, State Representative Quincy Troupe, frequently elected in the City of St. Louis, said in close elections, everybody knows in St. Louis you have got to beat the cheat to win. That is a sad commentary on our democracy, beat the cheat to win.

For those concerned with requiring a photo ID requirement takes away a fundamental right, you should know that the opponents to the Indiana photo ID law were unable to present a single person who was prevented from voting because of the law. Indeed, showing an ID is a universal feature of modern life. Cashing a check, renting a movie, boarding a plane all require a photo ID. And for those who do not have one, photo ID laws now require States to provide photo IDs at no cost to anyone showing such need.

No, Madam Chair, the time for excuses is over. Americans need confidence in their elections and they need confidence in their vote. Something so important deserves no less.

I thank you and I thank the committee for the opportunity.

[The prepared statement of Senator Bond follows:]

Chairman Feinstein. Thank you very much, Senator Bond. We appreciate the testimony.

We will now proceed to the second panel. Senator McCaskill has come in and joined the committee. She will introduce one of the witnesses. I would ask the witnesses please to come forward and take their place at the table.

I believe that the witness that Senator McCaskill is interested in introducing is Robin Carnahan, and she should know that both Senator Bennett and I had the pleasure of serving with your mother in the United States Senate. We miss her. We hope she is well. I will now turn it over to Senator McCaskill for an introduction of Robin Carnahan.

Senator McCaskill. Thank you, Madam Chairman. I am honored to be here to introduce a great public servant and a friend. Robin Carnahan comes from a legacy of public service in her family. Her brother is a Congressman. Obviously, her mother was a United States Senator, and her father a Statewide elected official for many years, including a terrific Governor that we lost tragically and we are--in Missouri, the Carnahan family has a very special place in our public service and in our politics and in our hearts.

I want to introduce her as the Secretary of State. She came to that office with a great deal of experience after a law degree from the University of Virginia and international experience in monitoring elections, working for the National Democratic Institute, traveling around the world to try to make sure that other countries understood the basics of fair elections. So she came with particular experience and pride to the job of monitoring elections in Missouri.

As my senior Senator testified, I recall all of the controversy that has surrounded Missouri elections, because in Missouri, we only do it one way, close. And so elections are always close and therefore they are always controversial because of the closeness of our State. We are a very evenly-divided State.

When Senator Bond referenced--I want to briefly just say, when Senator Bond referenced the study that was done of the election rolls in St. Louis City, he was referencing the work of my office as State Auditor. When I was State Auditor, after one of the incidents that Senator Bond discussed, we went in and audited the Election Board in St. Louis and we did find as he referenced that there were people on the voter rolls that shouldn't have been there. But I must underline here, we also found that none of them had voted.

This is not the problem, and we all know why names are on the rolls that shouldn't be. People register two places. People get felonies and their names are not removed. Sometimes people are registered fraudulently because the people who are registering voters are being paid by each individual that they are putting on the rolls. But that doesn't mean any of these people are influencing elections.

In 2006, we had a very controversial year in Missouri. The voter ID law was passed for political reasons because of the Senate election that was upcoming and, in fact, ACORN did register voters that they shouldn't have registered, but guess who caught it? The Election Board caught it and the Election Board took action and none of those people were allowed to vote.

And so our system worked very well, and I think that unless and until this panel or this committee can hear evidence that someone is voting fraudulently based on a fraudulent registration, this is much hoo-hoo about nothing and it is just political. And I know that the Secretary of State will speak with a great deal of authority about this subject. I am proud of her for being here and I think that she has a great deal to add to this hearing and I thank you for giving me the opportunity to introduce her.

Chairman Feinstein. Thank you very much, Senator McCaskill.

We will now go into the five-minute time clock. Many of you have submitted written statements, which we have and have read, of course. So I would ask you to summarize your remarks and confine it to five minutes, and I will take the liberty of going like this at the end of the five-minute time.

So Secretary Carnahan, let us begin with you.

**STATEMENT OF ROBIN CARNAHAN, MISSOURI SECRETARY OF STATE,
JEFFERSON CITY, MISSOURI**

Ms. Carnahan. Thank you, Madam Chairman, and thank you all to the committee for allowing me to be here. My name is Robin Carnahan. I serve as Missouri's Secretary of State.

As the chief elections official, it is my job to ensure that the elections are fair and accurate, and elections can't be fair if fraud exists that isn't caught, and they can't be fair if eligible voters are not allowed to vote. So the question you posed today, is the myth of in-person voter fraud leading to disenfranchisement, is one that I can speak to from experience, and I am sorry to say that in Missouri, I believe the answer is yes.

You know, Missouri is an exciting place to be overseeing elections because we are a battleground State and things are always close. Our most recent election on February 5 was no exception to that. And with close contests comes national scrutiny, and efficient and accurate election administration becomes even more important.

I am pleased to report that in Missouri, despite what we have just heard, that in recent years, we have seen just that, efficient election administration and no evidence of in-person or voter impersonation fraud. This is largely due to the great work of our local election officials, most of them elected county clerks, along with appointed election boards. They and their poll workers are the ones who actually run elections in our State.

We have found no documented instances of voter impersonation fraud in our State. You might ask, how is that, and I believe it is because we have current safeguards, which include a common sense ID requirement and stiff penalties for anyone who attempts fraud. And frankly, as important as elections are to those of us in this room, for the average citizen, their job doesn't depend on it and it is simply not worth someone lying about who they are just to cast another ballot, especially when doing so risks jail time, fines, and losing your right to vote forever.

But such unfounded allegations of fraud that are continually repeated undermine voter confidence and they also lead to restrictive measures that limit legitimate eligible voters and their right to vote. We saw this happen in Missouri.

Last year, or in 2006, our legislature passed a photo ID requirement and a stated reason for that was to prevent voter fraud and to increase voter confidence in case there was a perception of fraud. But again, in Missouri, we never had this kind of evidence of impersonation fraud and we have already had these common sense ID requirements that were based on what you in Congress passed in the Help America Vote Act.

What kind of impact would that law have in our State? Well, we found that as many as 240,000 eligible registered voters would not have been able to vote under that scenario. Who are these people? They are the elderly, disabled, poor, often minority voters who lack the type of specific government ID that would have been required. And for many, getting that ID would have been both too costly and too time consuming to get the free photo ID that was supposed to be available.

Now, our Missouri Supreme Court struck down that law as unconstitutional because it was too much of a burden on eligible voters. In fact, Judge Charles Blackmar was one of the Supreme Court judges that heard that case. He was told in the hearing by one of the attorneys defending the law that he could not cast a ballot. How could that possibly be, you ask? Well, he was 84 years old, he no longer drove, and the ID he used was an expired driver's license. That would not have been enough to allow that judge to be able to vote in the election. Fortunately, the law was overturned a month before the election and Missourians could use their regular IDs to vote.

Unfortunately, despite the law being struck down, there was still a lot of misinformation and confusion. To combat that, we tried voter education efforts and we also focused on transparency both during the elections and after. We put out a post-election report that found not only that the elections were fair, that over two million people voted, about 53 percent of our eligible voters, but despite all of this constant conversation about voter impersonation fraud, we found not a single instance or report of it anywhere in our State.

By contrast, we did hear problems, and the problems we heard were about misinformation. One out of every five complaints was about voters being asked for the wrong type of ID. And, in fact, I was one of those voters. If it can

happen to me as Secretary of State and I am familiar with the law and know my rights, we know it happened to others and they were turned away and inappropriately disenfranchised. I will repeat again and again, elections cannot be fair if voters are not allowed to vote and they cannot be fair if there is fraud that is not stopped.

We have had no reports during my tenure as Secretary of State of this in-person voter fraud. My Republican predecessor, Matt Blunt, also called the 2002 and 2004 elections fraud-free and two of the cleanest elections in recent history.

Now, this isn't to say we haven't had problems in our State. Like every other State, we have had some problems. Over the last few cycles, we have seen some isolated incidents. They have related to voter registration, absentee ballots, and three people that were found to have voted in both Missouri and Kansas. But again, no instances of in-person voter fraud.

The good news is that these instances were caught, and why were they caught? They were caught because our election officials were doing a good job, as was law enforcement. The system is working without adding extra barriers that run the unacceptable risk of inhibiting law-abiding citizens from exercising their constitutional right to vote.

Now, there are lots of things we can do to improve our elections. If you give me one minute more, I will tell you some good ideas, and that is that there are long lines and there are also problems running out of ballots. I think we can do things to avoid that by passing laws that require there be enough ballots at the polls, and also we can streamline the voter registration process by making it so you don't have to re-register every time you move from one part of the State to the other. These are the kinds of common sense solutions that I think we on a bipartisan basis can agree on that make our elections more efficient.

Thank you very much for your work on this important issue and I will be happy to talk with you more about it.

[The prepared statement of Ms. Carnahan follows:]

Chairman Feinstein. Thank you very much, Madam Secretary.

Just a news brief. The Capitol Superintendent has just notified us that the chandelier in the crypt has fallen to the floor. No one was hurt. They are apparently investigating the cause of that, but just to add a little spice to the hearing if the testimony isn't enough. And I note that chandelier right up there.

[Laughter]

Senator Schumer. Madam Chair, would you like my seat?

[Laughter]

Chairman Feinstein. Well, actually that is an interesting point. I will go on. Next in line is Professor Jeff Milyo. Professor Milyo is a professor in the Department of Economics in the Truman School of Public Affairs. He is an adjunct professor in the Department of Political Science at the University of Missouri. He is also the Hanna Family Scholar in the Center for Applied Economics at the School of Business and a senior fellow at the Cato Institute. He has served as an expert witness on several election litigation matters.

Professor Milyo, please proceed.

**STATEMENT OF JEFF MILYO, PROFESSOR, DEPARTMENT OF ECONOMICS,
UNIVERSITY OF MISSOURI-COLUMBIA, COLUMBIA, MISSOURI**

Mr. Milyo. Thank you, Madam Chairman and members of the committee. The public debate over illegal voting has not been well informed by the relevant social science literature. This morning, I will have just a few minutes to talk about some of the more important lessons and I look forward to the Q and A to go into more detail on any recent studies that you are interested in.

First, policy makers need to be concerned about illegal voting in general, not just voter fraud. This is because illegal voting, whether it rises to the level of vote fraud provable beyond a reasonable doubt or not, still disenfranchises legal voters and the appearance of illegal voting may affect people's faith in democracy.

Second, while political corruption is in general difficult to observe, the institution of the secret ballot makes illegal voting all the more difficult to study. Frankly, there are no data sets well suited to the statistical analysis of either the frequency of illegal voting or the efficacy of reforms intended to deter illegal voting. Consequently, existing claims about the prevalence of in-person illegal voting are not based on scientific evaluation studies. However, the absence of systematic evidence for want of appropriate data or analysis does not imply that illegal voting is a myth.

In my written testimony, I provide an indication of the extent of illegal voting by describing some novel evidence from the Census Bureau's current population survey from 1996 to 2002. This survey included questions about changes in residence and voter registration that caused some respondents to reveal, presumably inadvertently, that they had cast illegal ballots in the general election.

For example, in 2002, about 13 percent of eligible voters self-report casting an illegal ballot. Further, about 90 percent of these self-reported illegal votes were made in person, and I would also note that Missouri has consistently higher self-reports of illegal voting in every year. Of course, some of these responses may be the result of error or confusion. That is absolutely true in any survey data. But the sheer number of these self-reports strongly suggests that in-person illegal voting is more commonplace than is typically understood.

Voter ID laws, which are intended to deter in-person illegal voting and to give the public greater confidence in the integrity of the electoral process, may also reduce voter turnout by increasing the hassle cost of voting. But on this point, several decades of political science evidence should alleviate such fears.

For example, take the concern that large numbers of otherwise eligible voters currently lack appropriate proof of ID and so will be disenfranchised under voter ID rules. Without disputing the numbers of such persons, which tend to be greatly exaggerated, and apart from the unflattering portrait of people as too hapless to obtain ID even if so motivated, this argument ignores the sad fact that these same folks are already unlikely to be voters for any number of reasons unrelated to voter ID. The simple truth is that there are already many impediments to voting, from taking an interest in public affairs to registering and remembering where and when to vote. In fact, almost all non-voting is explained by these types of factors.

For example, in 2006, only 0.6 percent of eligible voters report not voting for reasons related to registration problems. For this reason, the small and incremental annoyance of presenting a valid ID at the polls is unlikely to have a substantive impact on turnout among legal voters.

Several recent studies examined the effects of State voter ID laws on turnout. The more meritorious of these demonstrate that even the most stringent voter ID laws have at most a modest impact on turnout. In addition, there is little consistent evidence that voter ID disproportionately affects turnout among minority, elderly, poor, or less educated citizens. Further, the 2006 current population survey reveals that the percentage of respondents not voting due to registration problems is not disproportionately high in Indiana, despite that State's controversial photo ID law.

Finally, the policy debate over voter ID too often ignores the fact that to the extent such reforms do deter illegal voting, turnout is expected to decline. Consequently, any finding that voter ID reduces turnout does not necessarily imply that legitimate voters have been disenfranchised. Instead, such reforms may end the disenfranchisement that otherwise would occur due to in-person illegal voting.

Given these lessons, it is apparent that the public debate on illegal voting and voter ID reforms has been ill served by inflammatory claims of a coming disenfranchisement. Rather, the weight of current evidence suggests that voter ID reforms may well be a sensible means to administer elections more effectively and fairly for all.

Thank you.

[The prepared statement of Mr. Milyo follows:]

Chairman Feinstein. Thank you very much. Well done within your time. I appreciate it.

The next person is Mr. David Iglesias. Mr. Iglesias followed law school with service in the Navy's JAG Corps. In that role, he was one of the members of the legal team that was the inspiration for the movie "A Few Good Men." In 1995, he was a member of the White House Fellowship Program as a Special Assistant to the Secretary of Transportation. He was an assistant city attorney for the City of Albuquerque before working for the Taxation and Revenue Department as General Counsel. At the time of his appointment to U.S. Attorney for the District of New Mexico, David Iglesias was an associate with the law firm of Walz and Associates in Albuquerque, as well as a Commander in the United States Naval Reserve JAG Corps. It is good to see you again, and welcome.

STATEMENT OF DAVID IGLESIAS, FORMER U.S. ATTORNEY FOR THE DISTRICT OF NEW MEXICO, ALBUQUERQUE, NEW MEXICO

Mr. Iglesias. Thank you very much. Madam Chair, Mr. Ranking Member, I will just take a few minutes--I will go under the five minutes, most likely--to just tell you what I did in the District of New Mexico as United States Attorney. I was sworn into office in 2001 and served through the early part of 2007, and as a chief Federal law enforcement person in the State, it was my job to enforce the Federal law.

During the summer of 2004, I received, or I actually reviewed lots of media and press accounts of apparent voter fraud that was occurring in the District of New Mexico, and I should add that my comments are restricted to New Mexico as I did not follow what was going on in other districts since that was not my responsibility. There were cases of apparent false registration. There were registrations found, for instance, in a crack dealer's home during a local police raid. I received a fair amount of inquiries from the media, from other law enforcement, of what was I going to do about this apparent problem.

So I decided to stand up a bipartisan Election Fraud Task Force. I was only one of two United States Attorneys during that time frame that set up a task force, the other being the Eastern District of Wisconsin in Milwaukee, and I intentionally included the State law enforcement agencies as the State has the primary jurisdiction to enforce voter fraud. So I included the State Police, the Secretary of State, and also the FBI. I worked very closely with the Justice Department's Public Integrity Section, Craig Donsanto who headed up their Election Crimes Unit.

On September 7 of 2004, I called a press conference in Albuquerque, identified who was on the election force, and basically said if the public has any referrals to call in, a toll-free number that I had set up in the FBI's office in Albuquerque. It was not a 24/7 number, but it did operate Monday through Friday.

During the course of approximately ten weeks, we received slightly over 100 phone calls. Many of the calls were perhaps criminal violations, trespass, that kind of things. People were upset about their yard signs being taken down. We made an initial cut in terms of was this an apparent State violation or an apparent Federal violation. I worked very closely with the local FBI and with DOJ and we identified one possible case for prosecution and that involved a woman who was registering folks that did not have the legal right to vote, and in one particular case a 13-year-old and a 15-year-old were registered by this person.

I sent the FBI to take her statement, read the report, and I also need to make clear I followed this matter very carefully. I talked to the agent on several occasions. I looked at his reports. I did not delegate this matter, since I believed there to be significant fraud going on in New Mexico. I intended to file voter fraud prosecutions, since the last year my office had filed any such prosecution was 1992 and I believed that there were righteous cases out there to prosecute.

Well, at the end of the day we couldn't prosecute because one of the elements of the crime, and the crime we were looking at was 42 U.S. Code 1973, Subsection G(g). One of the elements of that crime was I had to prove beyond a reasonable doubt that the suspect took the fraudulent action with the intent to defraud and to deprive the people of New Mexico of a fair election and the evidence we got was she was engaging in this conduct to earn money. She was getting paid on a piecemeal basis and the more people she registered, the more she got paid. So as a consequence, it was not only my opinion, but in the opinion of main Justice that this was not a provable case, and any prosecutor worth his or her salt will not file a case that they believe is not provable beyond a reasonable doubt. So I did not file any cases out of that cycle.

I stood down the task force in November of 2004. Subsequent to that, I received pressure from the former General Counsel of the State Republican Party, who repeatedly called my office, sent e-mails, left messages for my career prosecutor, who was working the matter for me. I also received some referrals from the chairman of the Bush-Cheney Reelection Team for Bernalillo County, the county sheriff, who was also very concerned, and he publicly criticized me last year for not filing any such matters.

In the time I have, I will just say that I looked for voter fraud. I wanted to prosecute voter fraud, but the evidence was not there.

Thank you, Madam Chair.

[The prepared statement of Mr. Iglesias follows:]

Chairman Feinstein. Thank you very much, Mr. Iglesias.

The Honorable Robert Simms is the Deputy Secretary of State for the State of Georgia. He was appointed to this position by Secretary of State Karen Handel on January 8, 2007. He manages the operations of the agency and serves as its CEO. He has led that agency's Photo ID Team, which instituted the Georgia photo ID requirement. Prior to that, he served as a partner in the public affairs firm Massey and Bowers, was Director of Government Affairs for the Atlanta Apartment Association, and served as Chief of Staff for the Georgia Fulton County Chairman Mike Kenn. Welcome, Mr. Simms.

STATEMENT OF ROBERT SIMMS, GEORGIA DEPUTY SECRETARY OF STATE, ATLANTA, GEORGIA

Mr. Simms. Thank you, Chairwoman Feinstein, Senator Bennett, and Senator Schumer. I want to thank you for the opportunity to testify before you today about voter fraud, voter identification laws, and ways in which States are addressing these issues. Today's hearing is very important and I hope that this occasion will be the beginning of a substantive discussion on the important issue of voter fraud and steps elections officials are taking to combat it.

In this regard, I view my testimony today as an opportunity to be a myth buster of sorts, because in-person voter fraud has, in fact, occurred in Georgia and our State's Federal identification law has been successfully implemented and enforced without incident, controversy, and most importantly, without a negative impact on Georgia's voters.

While in-person voter fraud does, in fact, occur and has occurred in my State, it is also very important to recognize that in-person voter fraud may not even be evident until after the election has already occurred or maybe even certified. In-person voter fraud is a crime for which there are often no witnesses and the victims themselves may not even be aware that the crime has occurred. Because of the nature of voter fraud and the difficulties in pursuing these cases, States are left with passing laws to address these issues proactively, meaning that they have to put laws and procedures in place to prevent fraud from occurring before it actually occurs.

In his ruling for the State of Georgia in the Federal Court challenge to the State's photo ID law, U.S. District Court Judge Harold T. Murphy, an appointee of President Jimmy Carter, recognized that the State's interest in passing a photo ID law, to prevent fraud. Judge Murphy wrote, and I quote, "Additionally, plaintiffs have failed to demonstrate that the photo ID requirement is not reasonably related to the State's interest in preventing fraud in voting."

In addition to arguing that in-person voter fraud does not occur and remedies like photo ID laws are unnecessary, many opponents of these laws have long argued, quite vocally and emphatically, that these laws would lead to disenfranchisement of, in Georgia's case, hundreds of thousands of voters. But when the State of Georgia finally had its day in court and evidence was proffered and considered, it became clear that the emotional and sometimes hyperbolic arguments used to argue against the State's photo ID law were simply empty rhetoric. Judge Murphy also addressed this in his decision for the State of Georgia. He wrote, quote, "Plaintiffs have failed to produce any evidence of any individual who would undergo any appreciable hardship to obtain photo identification in order to be qualified to vote."

The plaintiff's inability to produce a single voter who would be adversely impacted by the law should be a very important consideration for this committee. Of the two individual plaintiffs named in the Georgia Common Cause case, one testified that she did not mind getting a photo ID and did not think it would be too hard to get one, while the other individual's lawyer drove him nearly 200 miles to testify at trial while at the same time arguing that traveling seven miles to his country registrar's office or voting by absentee ballot was too great a burden.

In the three months after the September 2000 Federal Court ruling for the State of Georgia, more than 100 counties and municipalities held elections with the photo ID law in place. All occurred without incident and without legal challenge.

The first statewide test of this law occurred on February 5, 2008, with the administration of the Presidential preference primaries. Once again, the opponents' rhetoric was shown to be hollow and empty. The turnout for the Presidential preference primary surpassed expectations and set records. Over two million Georgians cast votes for their preferred nominee while having to show a photo ID at the polls. For comparison purposes, this represented a nearly one million-vote increase from 2004 and accounted for nearly 45 percent of the State's registered voters.

However, the most important statistic for these primaries is that of the more than two million votes cast; only 409 voters did not possess photo identification at the time they came to vote in person. This represents a microscopic percentage of the votes cast of two-hundredths of one percent. That figure was even reduced further. Under Georgia's law, voters who lack a photo ID at the time of voting are allowed to cast a provisional ballot. They then have two days to return to their registrar's office to verify their identities and have their votes cast. When the results of the election were certified, one-hundredth of one percent of the voters was not able to have their votes counted because they did not return to the registrar's office with one of the acceptable forms of ID.

In short, the predictions of mass disenfranchisement simply did not come to fruition and a very small number of votes showed up at the polls without a photo ID, and even a fewer number chose not to return with one, a decision with which no one knows the reason.

In addition to the record turnout, Georgia also saw a substantial increase in voter registration in the six months prior to the primaries, particularly among minority voters. Thus, while opponents have long contended that the laws would surpass turnout and participation, once again, our experiences proved this was not true.

In conclusion, our experiences in Georgia, much like those in Indiana, show that States can take real and meaningful steps to combat voter fraud by passing photo ID laws without disenfranchising our voters.

I would like to thank Chairwoman Feinstein and the committee for giving me the opportunity to testify today and I welcome the opportunity to answer any questions.

[The prepared statement of Mr. Simms follows:]

Chairman Feinstein. Thanks, Mr. Simms.

Our final witness is Justin Levitt. He is Counsel at the Brennan Center for Justice, focusing on voting rights concerns. Before a move to California, he also served as an assistant adjunct professor of clinical law at NYU's School of Law. He has worked on a number of civil rights and nonprofit voter engagement organizations, including a post as in-house counsel to the nation's largest voter registration and mobilization effort. Mr. Levitt is the author of several popular and scholarly publications, including a recent monograph entitled, *The Truth About Voter Fraud*.

Mr. Levitt, welcome.

**STATEMENT OF JUSTIN LEVITT, COUNSEL,
BRENNAN CENTER FOR JUSTICE, NEW YORK UNIVERSITY SCHOOL OF LAW,
NEW YORK, NEW YORK**

Mr. Levitt. Thank you, Madam Chair and Ranking Member Bennett. I very much appreciate the opportunity to testify before you today and to be part of this very distinguished panel.

I, too, look at myself as something of a myth buster, but unfortunately, I come to some different conclusions than that of my colleague here. Today, I will focus, if I may, on a particular type of voting fraud, impersonating someone else at the polls. Our research suggests that this is strikingly rare, and yet allegations of this sort of fraud have been used to justify policies that actually cause far more problems than the problems they allegedly resolve.

First, to the incidence of impersonation fraud at the polls, how often does this actually happen? Over and over, we see the same patterns. People talk about vote fraud or voter fraud, but most incidents, from what I understand your purposes today to be, are either false or off point. That is, they either don't involve an attempt to impersonate someone else at the polls but some other sort of wrongdoing, or they turn out not to involve fraud at all.

There are serious problems with elections, and we have heard about some of them today, but the fact is that impersonation of other voters at the polls is simply not among them.

As the Brennan Center has documented, the anecdotes cited to the Supreme Court in their Crawford case is a good example of this. This was the chance to lay out the case that this sort of fraud is a real concern. It is the most prominent forum to date and there were lots and lots of claims and we looked at each and every single one. We found much that was off point, like vote-buying cases, like cases of absentee fraud, serious concerns that we do not condone, but that we also do not confuse with impersonating another voter at the polls.

We also found a fair amount of untrue, including notorious and recurring debunked reports--an Atlanta Journal Constitution article that has been cited to you in testimony today, and it simply does not say what it purports to say. It is important to get to the heart of facts like that.

At the end of the day, we did find a tiny handful of substantiated cases of in-person fraud over the course of decades and over the course of hundreds of millions of ballots. These anomalies show that impersonation fraud at the polls has been known to happen. But what is important, what is far more notable is how very, very rare it is. Americans are struck and killed by lightning far more often.

Some say, and I respectfully disagree with Mr. Simms in this respect, there are only a few reports of this sort of fraud because this sort of fraud is difficult to detect. Even without eyewitnesses, and there are sometimes eyewitnesses, there will often be a victim and there will always be a paper trail, including signatures on the poll books. If you want to influence an election, you need a conspiracy of many impersonators, and that means many chances for someone to cry foul.

Now, the hunt was on for this sort of voter fraud, as Mr. Iglesias has testified, at the same time that Federal law enforcement made voter fraud a priority and at the same time that private entities were both equipped and extremely motivated to gather reports of this sort of fraud. Under these conditions, if this fraud happened with any frequency over the better part of at least a decade, the phones should have been ringing off the hook. And instead, there was apparently barely a ring.

Every year, there are far more reports of UFO sightings than reports of impersonation fraud at the polls. Still, this rare phenomenon has been used to drive policy, and policy that creates real problems rather than solving them.

Voter identification measures are not the only policies that this has been used to drive. Undue purges are one example. Unwarranted restrictions on voter registration are another example. But most prominent recently certainly are proposals to keep citizens from voting a valid ballot if they don't have particular forms of photo ID.

When we hear these claims, you usually hear about problems that ID would not solve, certain types of fraud that ID wouldn't fix, and the conclusion is drawn, therefore, we need a photo ID. That is bad logic. But it is not just bad logic that is the problem here.

Reliable empirical data also shows that restrictive photo ID laws are harmful and harmful to American citizens. Most American voters have this sort of ID, but a great many do not. There is some disagreement over exactly how many, but even the most modest estimates to date amount to more than two million registered voters nationwide. That is two million registered voters. Taking into account surveys of eligible citizens, voting-age American citizens, there is an even more substantial effect and a disproportionate impact on elderly citizens and minorities.

Moreover, the impact is beginning right now. Strict photo ID laws have already contributed to disenfranchisement in Indiana in 2007. In one county, 32 voters arrived at the polls without the right kind of ID and cast ballots that could not be counted. More than a dozen of these had been long time voters. We see these problems.

We thank the Congress for addressing the real facts of this issue in this hearing. It is very important to make sure that our policies don't create more problems than they solve, and I am more than happy to answer any questions that you may have.

[The prepared statement of Mr. Levitt follows:]

Chairman Feinstein. Thank you very much, Mr. Levitt, and I would like to thank all of the witnesses. I very much appreciate it.

I would like to ask a simple yes or no question and go down the panel, if I might. Is voter impersonation fraud a significant problem? Secretary Carnahan?

Ms. Carnahan. As I stated, in my State, we have not seen any instances of that.

Chairman Feinstein. Thank you. Mr. Milyo?

Mr. Milyo. As I stated, I don't believe we have appropriate data to answer.

Chairman Feinstein. Mr. Iglesias?

Mr. Iglesias. No, ma'am.

Chairman Feinstein. Mr. Simms?

Mr. Simms. Madam Chair, I don't think I could answer yes or no to that question.

Chairman Feinstein. Mr. Levitt?

Mr. Levitt. I believe that it is not, Madam Chair.

Chairman Feinstein. Thank you very much.

Increasingly, people are voting by mail. It is estimated that in the California primary, for example, about 40 percent of the State voted by mail. And in areas where you have gridlock, long hours, long commutes, it is more and more difficult for people to get to a Tuesday poll place. And so vote by mail, the absentee ballot becomes, I think, a major venue for the franchise. The question I have of any who would care to so indicate is, whether the Help America Vote Act sufficient in terms of the registration requirement for vote by mail to prevent fraud? Does anyone wish to answer?

[No response.]

Chairman Feinstein. No one wishes to answer. Mr. Levitt?

Mr. Levitt. In part, Madam Chair, that may be because we still--there is quite a bit that we don't know about vote by mail. In the past, there have been opportunities, and some of the testimony today has spoken to fraud using absentee ballots and time will tell whether the restrictions or the provisions in the Help America Vote Act for preventing fraud--including preventing fraud by absentee ballots are sufficient. But I think it is just simply not clear.

The Brennan Center, for its part, welcomes mail voting, but not as an exclusive substitute for the ability to vote in person. It is a nice safeguard to have, but we don't support that sort of thing as a substitute for regular in-person voting.

Chairman Feinstein. Yes. I suspect it is going to become even more the venue in the future. I know Oregon votes entirely by mail. It seems to me that this is the kind of great soft underbelly in all of this, that the number of votes can be so very high. It used to be that just a few people--and the absentee ballot, for example, in my State was largely conservative. That is no longer true. More and more people, if you are elderly, if you are infirm, if you work difficult shifts, whatever it is, this is your choice as a way to vote. You avoid long lines, problems, et cetera. So I would be interested in any comments anyone might have if they have looked at vote-by-mail and what we might do about it.

Mr. Simms?

Mr. Simms. Yes, ma'am, Madam Chair. In the State of Georgia, what Secretary Handel found when she took office a year ago were two kind of, I won't say glaring, but two problem areas with regard to absentee ballots.

The first is the State considered absentee ballot fraud a misdemeanor under the State code while throughout the election code, any other penalties for election fraud, including in-person election fraud, were considered a felony. So we worked with the legislature to pass legislation and to change the law that says basically if you are going to commit

voter fraud in the State of Georgia, you are going to face serious consequences and that would be a felony, potential felony charge.

The second is we have tightened up our verification process and we are going to codify this in the law this year, which involves the signature comparison between the voter registration card that is housed in the county registrar's offices to the application for absentee ballot as well as to the absentee ballot itself, and we are hoping that as we continue to look at the absentee balloting process, and as you said, and Georgia is the same way, we have seen an increase in absentee ballots being cast, that this is going to provide further safeguards to prevent absentee ballot fraud, which quite frankly has occurred in our State in years past.

Chairman Feinstein. Anybody else on this question? Mr. Iglesias?

Mr. Iglesias. I just wanted to add that of the referrals we got from citizens based on the toll-free number of the hotline, I broke it down into eight separate categories. I did have a separate category for voters receiving absentee ballots they did not ask for. I don't have a number, but one of those referrals resulted in a prosecutable case.

Chairman Feinstein. Thank you. Anybody else? Mr. Milyo?

Mr. Milyo. Yes, Madam Chairman. The question is about the treatment effect of mail vote fraud and I would say the same problems exist, that we don't have appropriate data to do scientific evaluation studies and I am not sanguine about the possibility of doing that in the short term. It would take more entrepreneurial data collection to do that.

Chairman Feinstein. Secretary Carnahan?

Ms. Carnahan. Likewise, in my State, we don't actually have mail-in voting. We do have absentee voting, which is a subset of that, and still you are required to have a notary on that. So this hasn't been a major problem in our State, although it is something we are very aware of.

Chairman Feinstein. Thank you. Senator?

Senator Bennett. Thank you very much.

On the issue of prosecutable crimes or is this happening or we have no evidence, I would like to turn to the source that Senator Schumer quoted to us at the opening and that is Judge Posner. He says, on the other side of the balance is voting fraud, specifically the form of voting fraud in which a person shows up at the polls claiming to be someone else. Without requiring a photo ID, there is little if any chance of preventing this kind of fraud because busy poll workers are unlikely to scrutinize signatures carefully and argue with people who deny having forged someone else's signature. The absence of prosecutions is explained by the endemic under-enforcement of minor criminal laws, minor as they appear to the public and the prosecutors at all events, and by the extreme difficulty of apprehending a voter impersonator. He enters a polling place, gives a name that is not his own, votes, and leaves. If later it is discovered that the name he gave is that of a dead person, no one at the polling person will remember the face of the person who gave that name, and if someone did remember it, what would he do with the information? Judge Posner is not persuaded.

I would also point out for those who say this is a partisan issue and only the Republicans are concerned about it that the commission that was headed by Jimmy Carter and James Baker in a bipartisan way recommended voter ID. I do not think Jimmy Carter is a skill for the Republican Party.

Now, let us get to this question that everybody, I think, agrees has been going on and is going on and for which prosecutions have been entered, and that is the creation of false registrations. And the question that occurs to me, as one who is not burdened with a legal degree but has spent a lot of my time in elections, if I am spending good time and money as the campaign manager in an election, whether I am doing it for a candidate or doing it as part of a 527,

why would I be paying people to create false registrations if I have no intention of having somebody show up at the polls and use that registration?

Any comment?

Mr. Levitt. If I may, Senator, the former U.S. Attorney for the Western District of Missouri made exactly that point in his testimony, I believe before the Judiciary Committee. The cases that we know about where people have submitted false registration forms are actually committing a fraud on the organizations that employ them, and in fact, when former U.S. Attorney Brad Schlozman was testifying, he recognized this and said that organizations--

Senator Bennett. All right. So why is the organization so stupid as to keep doing it if they know that fraud is going on? They do it because they think they are going to get an advantage. They are not so dumb as to constantly pay out money for which they get no value.

Mr. Levitt. With respect, Senator, when they find individuals who have defrauded them in this way, who have submitted false registration forms, it is often the organizations themselves, and I know this was the case, for example--

Senator Bennett. I understand--

Mr. Levitt. --Turn these people in--

Senator Bennett. But they keep hiring people to do registrations for them. Why do they do that if they do not intend to have somebody go to the poll and vote under that name?

Mr. Levitt. In part, Senator, because we depend in this country on a mammoth private effort to ensure that American citizens are registered. Organizations that conduct voter registration in the community are really—and they do this for all parties and all candidates--they are really part of the life blood that gets American citizens into the system.

The registrars do everything that they can, but there are simply more Americans out there that need the outreach that these--

Senator Bennett. I understand all that. I have run campaigns. I still believe that the willingness of people to pay for massive registration drives without any attempt whatsoever to determine whether they are real people—and that is where Ritzky Mekler got registered--is done by people who at the back end intend to take advantage of that. I can't imagine any other reason why they should do that.

All right. We have not just opinions, we have on-the-ground experience with photo ID and we have the on-the-ground experience from Georgia that says it has not been a problem. Does anybody on the panel have an example based on either Indiana or Georgia where they can say there has, in fact, been significant voter intimidation in either Georgia or Indiana since the law was passed?

Mr. Levitt. If I may, Senator, with respect, there have already been more people disenfranchised in Indiana, for example, than the number of reported incidents of impersonation fraud over the last few decades. So to my mind--

Senator Bennett. Can you document that?

Mr. Levitt. I can, indeed, sir. The 32 voters--

Senator Bennett. Because in Georgia, they document it the other way.

Mr. Levitt. The numbers--I don't dispute Mr. Simms's numbers at all, but I place a different significance on them, and that is I believe almost 300 individuals arrived at the polls without ID, cast ballots that could not be counted--

I believe that almost 300 individuals arrived at the polls without ID and cast ballots that could not be counted. Even if some of those individuals--and we simply don't know--even if there were individuals among them who were ineligible, that still leaves a substantial number of individuals who were not able to cast ballots that could be counted who were eligible because of this requirement and far more than the cases of in-person disenfranchisement.

It is not that I disagree with the numbers, although these are primary numbers. The people who are really adversely impacted by the--unfortunately, we will see really how that takes effect in part in the general election when more of the population comes out. But it is not that I disagree with the numbers, I disagree with the conclusion.

Mr. Simms. Senator Bennett, if I may, I think there are two significant parts of Mr. Levitt's kind of argument or conclusion that are simply off base. There were less than 300 votes, or voters who cast ballots whose votes were not verified, and as he said, we will never know the reason why. I suspect the number one reason why is because they didn't return to the registrar's office because the election they were casting a ballot in was not in dispute. We had significant margins of victory in our State, particularly in the Democratic primary. So human nature being what it is, if they have cast a ballot and are expected to return to the registrar's office and they see a candidate has won by 30 points, they are probably not going to take the time to return.

That being said, I think it is also important to point out in our State, one, we provide identification for free and it is readily accessible. In fact, you can get an ID after you have cast your provisional ballot, before your ballot is verified.

And if I may just briefly, to your earlier question, with regard to Judge Posner's opinion, I think there is an important part of this that he was hitting on and that Mr. Levitt included in his written testimony that I think needs to be addressed, and that is this. I vote in a precinct in the City of Atlanta which may see turnout of 1,000 voters. The idea that a poll worker is going to recognize that I am Robert Simms that lives at my home address and the person who may have voted before me as Robert Simms may not live there is just nonsensical.

But there is one sure way to prevent that someone does not vote as Robert Simms at my home address and that is to require an ID when they cast the ballot, and that is the thing that I think we have to keep in mind when we discuss these issues and also that photo ID is a tool that the States have in addressing the larger issue of voter fraud, and as we have done in Georgia and as I stated earlier, including taking several steps to address absentee ballot issues and things of that nature.

Senator Bennett. Thank you.

Chairman Feinstein. Thank you, Senator.

Senator Schumer is going to come back and wanted to ask some questions, so in the interim, let me just share how it appears to me. It appears to me that whether--there is a balance. Whether the requirement that you have a photo ID does, in fact, disenfranchise people who no matter what would not have access to it, whether they are elderly and in a rest home or convalescent hospital, whether they are minority and don't feel comfortable getting on, whether they are of a socio-economic venue where they are just not going to do it, and I gather that virtually every study that has been done to date shows that some significant section of our society would effectively be disenfranchised.

So, therefore, the balance comes, is there enough fraud by impersonation to justify it, and it seems to me that wherever we look, you just find small instances. And I think that is sort of the waiting that one has to look at. You don't see any substantial, massive fraud. Maybe there is on occasion one or two or five or six, but does that justify saying to everybody that is in a convalescent hospital or infirm or elderly who is just not going to want to do this or can't do it, you are disenfranchised if you don't have it. To me, that is what this question comes down to, Senator.

I would be interested in anyone that wants to comment to the contrary or the affirmative. Madam Secretary?

Ms. Carnahan. I would like to echo your statement, because this really comes down to what is common sense and what is the right balance. Obviously, people need to identify who they are before they go vote to make sure they are a legitimate, eligible voter. In my State, we have those laws already, but it is not just one very specific ID, which is what these new laws like Indiana and Georgia are requiring.

In my State, for example, what that means is to get the free State-issued photo ID, there are lots of steps that you have to go through, and for a senior or a person who might be disabled or even younger people, and they don't always have these. The first step is you have to have a proof of lawful presence. That means you have to present a birth certificate. If you don't happen to have your birth certificate, if it has been destroyed, you have to wait to get that. In my State in the last election, it took up to ten weeks to get a new birth certificate. It has to be certified. So if you come from Louisiana, it may have been washed away and you might not be able to get a new birth certificate and we had people who told us those stories. Those birth certificates also cost money, between \$5 and \$30.

You then had to provide proof of your identity and the document for that is a Social Security number or some kind of a passport. You then had to provide proof of your residence, which could be a utility bill or some kind of other check. If you are a woman or anyone who had changed their name, you had to also get your court documents, your marriage license, a divorce decree, any kind of court document that showed that your name had changed. Getting these papers costs money and it takes a lot of time. So guess what? For a lot of people, it is just not worth it.

I also mentioned in my testimony about the judge who, because he had an expired driver's license that he used to get on planes or cash checks, that wasn't enough to vote, and madam, we also had a situation where a member of Congress could not have used his Congressional ID to vote in my State. That wasn't enough because it didn't have a date on it.

So there are a lot of common sense things we can do, but this type of strict photo ID is not one of them.

Chairman Feinstein. Thank you. I think that is very helpful testimony.

Do you have something else, or shall I turn to Senator Schumer?

Senator Bennett. Let us hear from Senator Schumer, if I may reserve the right to respond—

Chairman Feinstein. That may spur you on.

Senator Schumer. But I don't mind, Senator Bennett. I am back now.

Senator Bennett. I quoted Judge Posner while you were out.

Senator Schumer. Judge—

Senator Bennett. Posner.

Senator Schumer. Oh, Posner. Thank you.

Senator Bennett. The one whom you quoted.

Senator Schumer. Yes.

Senator Bennett. I quoted more of the opinion—

Senator Schumer. I figured—

Senator Bennett. --that put him on my side rather than yours.

Senator Schumer. Well, on the opinion, he was on your side, but on the specific said, he never contradicted himself about—

Senator Bennett. But he argued pretty strongly for a photo ID.

Senator Schumer. Yes, he did. Okay. First, Madam Chairperson, I would like to ask unanimous consent to put the following documents in the record: An April 12, 2007, New York Times article entitled, "In Five-Year Effort, Scant Evidence of Voter Fraud;" a March 21, 2000 op-ed by one of our fine witnesses, David Iglesias, entitled "Why I Was Fired;" a voter ID study by Professor Timothy Vercellotti and David Andersen entitled, "Protecting the Franchise or Restricting It?"; a report by the American Communities Project at Brown University entitled, "The Suppressive Effects of Voter ID Requirements on Naturalization and Political Participation;" and two reports by the Brennan Center--we have a witness, of course, a fine witness from there--at NYU School of Law entitled, "The Truth About Voter Fraud" and "Analysis of Alleged Voter Fraud." I ask unanimous consent that all of these be added to the record.

Chairman Feinstein. So ordered.

[The information of Senator Schumer follows:]
/ COMMITTEE INSERT

Senator Schumer. Thank you, Madam Chairperson. Now, first, I know Senator Feinstein asked this in one way. I want to ask it another way. Can any of you identify a successful case that was prosecuted at the State or Federal level of in-person voter fraud? And you can just answer yes or no.

Ms. Carnahan. Not in Missouri.

Senator Schumer. Professor Milyo, yes or no?

Mr. Milyo. Not my expertise, no.

Senator Schumer. Mr. Iglesias?

Mr. Iglesias. Not in New Mexico.

Senator Schumer. Mr. Simms?

Mr. Simms. I am not aware of a case in Georgia.

Senator Schumer. Mr. Levitt?

Mr. Levitt. Not in the last few decades.

Senator Schumer. Okay. Well, Madam Chairperson that is the point I wish to make here. Having a voter ID, we are arguing whether it suppresses voting or not and that is a legitimate argument. It seems logical to me it does, but there is another side to that one. But to pass laws when there is not a single--we can't find a single prosecuted case of in-person voter fraud, which is the fraud that is aimed at--which a voter ID card is aimed at. There are lots of other kinds of fraud. Robert Simms talked at great length about Dodge County. Dodge County had nothing to do with in-person voter fraud. It was, am I correct, D.A. Simms, it involved buying absentee ballots, correct?

Mr. Simms. Well, I am not sure what the D.A. part of it means, but—

Chairman Feinstein. He referred to you as District Attorney.

Mr. Simms. Oh—

Senator Schumer. Secretary Simms, sorry.

Chairman Feinstein. Yes.

Mr. Simms. Okay. I might like the promotion, actually, at the end of the day—

Senator Schumer. Then maybe you could prosecute voter fraud.

[Laughter.]

Mr. Simms. I could have all kinds of opportunities come out of this hearing. This could be great.

Senator Schumer. But seriously, wasn't that a case—I am talking about this Dodge County which you talked about in your testimony. That was about buying--it involved vote buying and absentee voting, correct?

Mr. Simms. The State and Federal prosecution from 1997, the legal summary says most of the illegal activities involved absentee voting.

Senator Schumer. And a mandatory ID law would not have been able to prevent the absentee ballot fraud at the center of the Dodge County case, isn't that correct?

Mr. Simms. I really don't know.

Senator Schumer. Pardon?

Mr. Simms. I don't know. I don't—

Senator Schumer. Well, there is no logic to it. There is no--showing up and showing an ID would have nothing to do with an absentee voter fraud case.

Mr. Simms. It may not—

Senator Schumer. Because you don't show up, by definition.

Mr. Simms. It may not, but at the same time, the legal--the summary is most of the incidents in Dodge County had to do with absentee ballots.

Senator Schumer. Okay. And I want to ask you another question. My good colleague and friend Senator Bond—we didn't have time for questions--always brings up the case of the dog, okay. Now that meant somebody registered their dog and filed a registration form. Did anyone vote in that case? Did the dog or a person who said he or she was the dog vote in that case?

Ms. Carnahan. I can speak to that.

Senator Schumer. Please.

Ms. Carnahan. A dog has never voted in Missouri, nor has a dead person come from the grave to vote in Missouri, which I think means the system is working, that there are different layers and we prevent fraud at many steps—

Senator Schumer. And clearly a voter ID card wouldn't have prevented the dog from voting unless it was Cleo.

Remember Cleo the talking dog on one of those shows?

[Laughter.]

Senator Schumer. I don't remember. It was like Mr. Ed, but I forgot--this dates me. There was a show where there was a talking dog named Cleo. It was a beagle.

[Laughter.]

Senator Schumer. But seriously, Mr. Simms, the case that our colleague revels in showing us had nothing to do with a voter ID card, correct?

Mr. Simms. I can't speak to the case Senator Bond was referring to—

Senator Schumer. No, no, no, but I am just asking you, if somebody registered their dog and they got on the voter rolls but they never voted, which is the case here—

Mr. Simms. Sure.

Senator Schumer. --then a voter ID system would not prevent that kind of thing from happening. Something else might, and maybe we should pass something else, but voter ID would not, is that correct?

Mr. Simms. It certainly wouldn't on the front end, the registration side—

Senator Schumer. Right.

Mr. Simms. --but should somebody choose to vote in that dog's name, the photo ID requirement would prevent that.

Senator Schumer. Mr. Levitt, what do you say about that?

Mr. Levitt. I think you already have prevented that sort of thing, with respect, Senator, through the Help America Vote Act of 2002. It put in place a lot of protections to ensure that in the future, if someone submits a registration form in a dog's name or in another fictitious name, that person can't cast a vote or a vote can't be cast in that name—

Senator Schumer. And that is basically--I mean, the point I am trying to make here is that there may be voter fraud out there. I don't think it is as widespread as many claim, but we should strike it down, try to avoid it in every single instance. It does debase the political process. It also debases the political process to put barriers in the way of people voting, particularly poor people. Senator Bond mentioned, well, everybody flies an airplane. He used two other examples. Goes to the movies, although I don't know--in New York, they don't check your voter ID when you go to the movies. I don't know how it is in Missouri. Mr. Simms or Ms. Carnahan, do they check your voter ID when you go to the movies?

Ms. Carnahan. No, sir. I think he was talking about renting a movie and cashing a check—

Senator Schumer. Oh, I see—

Ms. Carnahan. --which sometimes do require an ID.

Senator Schumer. Yes, and the third one was cashing a check. Well, there are lots of people--my guess is you could go to St. Louis or Brooklyn, New York, and you would see a good number of people who have every right to vote, as much as you or I do, who do not have a checking account and do not fly airplanes, and what do we say—

Ms. Carnahan. In Missouri, there were up to 240,000 of those people.

Senator Schumer. Right. So this idea that we should impose our way of living--for me, I travel all the time to New York on the shuttle. ID, photo ID is easy. For some people, it isn't, and we are not supposed to--when it comes to voting, we are not supposed to legislate for the mean. We are supposed to legislate for everybody. If I am going on too long, Madam Chairperson—

Chairman Feinstein. You are a minute and 30 seconds over, but we are all interested in your comments.

[Laughter.]

Senator Schumer. Okay. My colleague from California has the lightest, best touch of anybody in the Senate. That means, ask one or two more questions but you had better wrap it up. In Brooklyn, that isn't how we would say it, but she said it much better than I ever would, so I am just going to ask Professor Milyo a couple of quick questions on his study. First, you are not an election expert, is that correct, Professor? That is not your area of expertise?

Mr. Milyo. No, I would say that I am a scholar of American political economy. That would include elections within that realm.

Senator Schumer. Okay. I just want to ask you about the study you showed. That was not published in a peer-reviewed journal, was that correct?

Mr. Milyo. Like most of the studies that have been cited that have come out quickly, it has not. It often takes years for that to occur.

Senator Schumer. Right. Did somebody either pay you for that study or ask you to do the study, or did you do it just on your own volition?

Mr. Milyo. I received a grant to look into the topic.

Senator Schumer. From whom?

Mr. Milyo. It was from, I believe, an organization called the Center for Ethics Research or something of that—

Senator Schumer. Well, do you know the name? They paid for the grant. I think that is important to know.

Mr. Milyo. I didn't bring my 1099, but I can produce it if you would like.

Senator Schumer. Okay. I would ask unanimous consent that he be allowed to submit to the record who did the study. Does anyone else know who did it?

Mr. Milyo. I did the study.

Senator Schumer. I mean, who paid for the study, the foundation. Is anyone else here familiar? Are you, Mr. Levitt? No?

Mr. Levitt. I am not.

Senator Schumer. Okay, of that group. Okay. And you take a somewhat surprising view based upon a look at only one election after the Indiana law passed that Indiana voter ID actually increased turnout. You compare 2006 to 2002 in Indiana. Now, most States did not pass voter ID between 2002 and 2006. So do you know the difference in Democratic voter turnout in those States or nationwide between 2002 and 2006 so we have some kind of control here?

Mr. Milyo. Well, just to correct your premise there, I did not assign the increase in voter turnout as a treatment effect of photo ID. In fact, I was quite clear that one could not do that. There was an increase in voter turnout in Indiana after the imposition of voter ID, but as your question gets at, other things were changing, as well. So the analysis in the study looks at changes in county-level turnout by demographics of the counties.

Senator Schumer. Right. But again, since it is broad and without controls elsewhere, we would have no knowledge of whether voter ID increased or decreased turnout, I mean, because we don't have a control. We can't control the county. It was done without it one time and with it in another time.

Mr. Milyo. This particular study looks at relative changes in turnout across counties with different demographics. There are other studies that look at aggregate voter turnout, which if one looks at those you would see that what I talk about here is not surprising. Anyone who has looked at aggregate voter turnout at changes in actual voter turnout, how they correlate with changes in voter ID laws, has found that there is no significant relationship or that there is a positive relationship.

Senator Schumer. You can submit for the record any other studies of people who have found that. But I just want to ask you—

Mr. Milyo. They are all cited in that report and I can add additional ones if you would like.

Senator Schumer. We will look at it. Isn't it possible that turnout might have been higher still in Indiana had there been no voter ID passed?

Mr. Milyo. It is absolutely possible. That is correct. That is why we do statistical analyses across States, as well. Folks who have looked at that did not find that to be the case.

Senator Schumer. Thank you, Madam Chairperson.

Chairman Feinstein. Thank you. Senator Bennett, do you have further questions?

Senator Bennett. Yes. Senator, I happen to have copies of all of those studies if you would like to see them.

Senator Schumer. I would.

Senator Bennett. They are available through a wide variety of experts who have gone through, and they do indeed support the position that Professor Milyo has indicated. There is no evidence that anybody has done any in-person false representation. Here are the studies, Senator, if you want.

Senator Schumer. I apologize.

Senator Bennett. All right. Let me go to *Borders et al v. King County et al*. I hesitate to venture into this because I am not a lawyer, but I have a verbatim report of the proceedings here, and if I can pick out, referring to Pierce County, it says 19 ballots were cast in the name of deceased persons. There is no indication in this record who cast those ballots or for whom the ballots were cast. Since there is no indication as to who cast the ballots, and indeed common sense tells us we can't ever find the answer to that question, is it logical to assume that at least some were cast in person?

Mr. Levitt. If I may, Senator—

Senator Bennett. Yes.

Mr. Levitt. --with respect to most of the absentee-- most of the ballots cast on behalf of deceased persons in that case were, in fact, absentee ballots.

Senator Bennett. All right, but not all.

Mr. Levitt. It is unclear from that—

Senator Bennett. It is unclear.

Mr. Levitt. That is correct.

Senator Bennett. So there is a possibility, indeed I would suggest a probability, that there was, in fact, some in-person voter fraud that did not get caught for all of the reasons that Judge Posner laid out. Six individuals cast more than one ballot in the 2004 general election. There is no evidence that these individuals were not registered voters. The first ballot they cast was valid, but the second was illegal. There is no evidence that the individuals marked the ballot in the gubernatorial election and for whom they cast their ballot. They physically showed up. They cast two ballots. I think that is a case of in-person voter fraud. Referring to King County, 348 ballots that were inserted directly and improperly into the machine. Two-hundred-and-fifty-two were ultimately determined to have been cast by registered voters, leaving a net total of 96. Do we assume that the net total of 96 fraudulent ballots were all cast by poll watchers and workers who violated the machine? Or were they cast by in-person voters who didn't get identified? We don't know. All right. Following an investigation by Ms. Sanchez--this is also King County--provisional ballots cast without labels. It was determined that 348 of these ballots were cast by registered voters, leaving a net balance of 79. These are 79 people who physically showed up and they were not registered voters. Isn't this prima facie evidence of in-person voter fraud, which, for all of the reasons Judge Posner makes clear and that Mr. Simms comments on further, are a logical extension of the way things really happen in the real world.

Mr. Simms, you were going to comment.

Mr. Simms. Yes, sir, Senator Bennett. I think the most important issue you raise with these ballots that were cast is that no one knows what happened to them. As I said in my prepared remarks and written testimony, I cited a study that was done by the Atlanta Journal Constitution that Mr. Levitt cited both in his written testimony as well as in his remarks before the committee today and I think there is one important distinction, or to reemphasize that point further, that while Mr. Levitt goes to great lengths to argue that those 5,500 ballots that were cast in the name of deceased voters could not have been in-person ballot fraud, no one can say how those ballots were cast properly or improperly and, in fact, what actually occurred, and I would submit that that is a pretty frightening proposition. Again, not just with photo ID requirements, but with just other steps and other tools that the State can have to ensure the integrity of elections, you can take steps to—in the processes and in the laws to address some of these things, in which case a photo ID requirement or an identification requirement may have addressed some of the issues with those 5,500 voters, or in the voters that you state from King County and other parts of Washington.

Senator Bennett. All right. Let me just close, Madam Chairman, going back to the Holtzman activity that was ended in 1982. It says there was repeated fraud that took place in at least one race in elections until 1982, when it was shut down, and the investigation revealed that one individual, then age 17, voted using a bogus registration card. The legal voting age in 1968 was 21. That same person, the grand jury found, voted at least ten times in a primary race using false registration cards. In 1972, he served as chief of a crew of five, each of whom voted more than ten times. In 1974, he ran a crew of eight, each of whom voted more than 20 times. Crew members were paid \$50 each. In 1976, he led a crew of five people who cast a total of at least 100 votes and recommended a tightening up of the entire procedure of identifying people, knowing who they were, checking their registration cards and so on. We hope that tightening up has occurred, but let us not assume that vote fraud doesn't happen, that there is no motivation for it, and that it does not occur with in-person vote fraud just because we can't catch it and get a provable case. I agree with you, Mr. Iglesias, that your case probably was not provable, but it was clearly vote fraud.

Chairman Feinstein. If I may, because the time is late, I think something that Secretary Carnahan said was really important. In her State, the photo ID law really has hoops that one has to go through to get the ID. And it seems to me that that could cause—

Senator Bennett. I will be happy to say unkind things about Missouri's photo ID law.

Chairman Feinstein. --a substantial barrier to the franchise, and I think that is one of the great fears out here. I know an awful lot of people. In my State, I would say there are hundreds of thousands that wouldn't have access to a photo ID who should have access to the polls. And unless you have got some consequential evidence of this kind of fraud, to do a voter ID when you know there are anywhere from two million to 11 million people who would be disenfranchised to me just has no cost benefit. So I would kind of like to leave it at that. Several members have not been able to be here this Morning. Senators Inouye and Dodd have asked that their opening statements be admitted to the hearing record. It will be without objection.

[The prepared statement of Senator Inouye follows:]

[The prepared statement of Senator Dodd follows:]

Chairman Feinstein. I would also ask the following documents be admitted to the record: A letter from Texas State Representative Rafael Anchia addressing his experiences with the photo ID legislative debate in Texas; a letter from Barnard College professor Lorraine Minnite; a letter from Caroline Frederickson and Deborah Vagins of the ACLU; a letter from Miles Rappaport, President of Demos, a Network of Ideas and Action; and a letter from the United States Department of Justice declining the initiation to William Welch, Chief of the Public Integrity Section, to be a witness at this hearing. These documents will be entered into the record, without objection.

[The information of Chairman Feinstein follows:]

/ COMMITTEE INSERT

Chairman Feinstein. I would like to thank our five witnesses. Thank you. I think you were very helpful in this debate. Your testimony was very constructive. I thank all of you very much.

The hearing is adjourned.

[Whereupon, at 12:05 p.m., the committee was adjourned.]