

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,	:	
	:	
Plaintiff,	:	Docket No. CA 12-128
	:	
vs.	:	Washington, D.C.
	:	Monday, July 9, 2012
ERIC H. HOLDER, JR., in his	:	9:00 a.m.
official capacity as	:	
Attorney General of	:	
the United States,	:	
	:	
Defendant, and	:	
	:	
ERIC KENNIE, et al.,	:	
	:	
Intervenor-Defendants.	:	
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(A.M. SESSION)
TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE DAVID S. TATEL
UNITED STATES CIRCUIT JUDGE
THE HONORABLE ROSEMARY M. COLLYER
THE HONORABLE ROBERT L. WILKINS
UNITED STATES DISTRICT JUDGES

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1 P-R-O-C-E-E-D-I-N-G-S

2 THE DEPUTY CLERK: Civil action 12-128, State of
3 Texas versus Eric H. Holder, Jr.

4 For the plaintiffs, Jonathan Mitchell, Patrick Sweeten,
5 Matthew Frederick, Reynolds Briffenden, Stacey Napier, Adam
6 Mortara, John McKenzie, Asha Spencer and John Hughes.

7 For the defense, Meredith Bell-Platts, Jennifer
8 Maranzano, Elizabeth Westfall.

9 For the intervenor defendants Chad Dunn, Gerald Hebert,
10 Ezra Rosenberg, Nancy Abudu, Adam Harris and Brian Sells.

11 JUDGE COLLYER: Good morning everyone. I'm Judge
12 Collyer and to my left is Judge Tatel of the Circuit Court and
13 to my right is Judge Wilkins of the District Court.

14 We're here today for trial in Texas versus Holder and
15 Texas bears the burden so it will go first.

16 I am going to be timing things. Texas has, what is it
17 ten hours, the United States has ten hours, and the intervenors
18 have five hours. The direct examination counts against a
19 party, the cross examination counts against the party doing the
20 cross.

21 As I understand it, Mr. Mortara, welcome back to you and
22 your colleague and colleagues. I understand that you wanted to
23 make an opening statement and you understand that will come
24 from your time?

25 MR. MORTARA: Yes, Your Honor.

1 THE COURT: Okay. Go right ahead, sir.

2 OPENING STATEMENT BY MR. MORTARA

3 MR. MORTARA: Thank you, Your Honor.

4 It's great to be back.

5 JUDGE COLLYER: Welcome.

6 MR. MORTARA: May I proceed, Your Honor?

7 THE COURT: Yes, please, sir, when you're ready.

8 MR. MORTARA: Adam Mortara for the State of Texas.

9 Before I begin today I would like to introduce our team.

10 From my firm John Hughes, and Asha Spencer and from the State
11 of Texas office of the Attorney General, Patrick Sweeten,
12 Stacey Napier, Matthew Frederick, John McKenzie, Reynolds
13 Briffenden.

14 Also with us is the Solicitor General of Texas, Jonathan
15 Mitchell.

16 This is a case --

17 JUDGE COLLYER: But you didn't mention the font of
18 all knowledge.

19 MR. MORTARA: Your Honor, I did not mention Amanda
20 Saliga, a core member of our team and previously denoted by
21 this Court the font of all knowledge.

22 JUDGE COLLYER: Correct.

23 MR. MORTARA: This is a case about Texas' proposed
24 implementation, one of the most popular voting forms over the
25 last 20 years, the common sense requirement that when you show

1 up to the polls to vote you prove who you are, who you say you
2 are with a photo ID.

3 The Court knows of course that we all have to provide
4 photo ID as a matter of routine life. When we even entered
5 this courthouse today most of us had to provide a photo ID to
6 be here so we could have this discussion.

7 States around the country have enacted bills like Senate
8 Bill 14 to secure the polling place in the same way that
9 airplanes, Amtrak, tall buildings and this very courthouse are
10 secured.

11 I want to begin very briefly, because I know the Court
12 is well aware, with the legal standard. And I've got on the
13 screen the Section 5 standard direct quotes from Section 1973 C
14 and 1973 B which I know the Court is well aware of and as Judge
15 Collyer observed, it's Texas' burden here to prove that Senate
16 Bill 14 neither has the purpose nor will have the effect of
17 denying or abridging the right to vote on account of race or
18 color and in the case of Hispanics is statutorily defined as
19 being members of a language minority group, we must prove that
20 Senate Bill 14 will not deny or abridge the right of any
21 citizen of the United States to vote because he is a member of
22 a language minority group.

23 So there are two issues, does Senate Bill 14 have a
24 prohibited discriminatory effect and was it enacted with a
25 discriminatory purpose.

1 I'm going to start with and spend most of my time on
2 effect. There are four independent reasons why Senate Bill 14
3 does not have a prohibited discriminatory effect under Section
4 5.

5 The vast majority of registered voters in Texas already
6 have photo ID. And Senate Bill 14 does nothing whatsoever to
7 their ability to vote. But even for those few registered
8 voters who don't have photo ID already, for instance, someone
9 who has just turned 18 and registered and hasn't gotten a
10 driver's license or state ID yet, we are going to offer a free
11 photo ID called an election identification certificate. It is
12 a little bit of a funny word, it's actually just going to be a
13 card like a state ID with a photo on it.

14 And the Supreme Court has already addressed, not in a
15 Voting Rights Act case but in the context of a voting rights
16 challenge in Crawford the burden imposed by the requirement to
17 obtain a free photo ID.

18 What the Supreme Court said in Crawford was for most
19 voters who need them the inconvenience of making a trip to the
20 BMV, gathering the required documents and posing for a
21 photograph surely does not qualify as a substantial burden on
22 the right to vote or even represent a significant increase over
23 the usual burdens of voting.

24 The first reason Senate Bill 14 will not have a
25 discriminatory effect is the requirement to obtain a free ID

1 for the small number of people that don't already have it will
2 not deny or abridge the right to vote.

3 The second reason that Senate Bill 14 will not have a
4 prohibited discriminatory effect is that the Social Science
5 Literature shows us that photo ID requirements do not effect
6 anyone's ability to vote and there's an abundance of Social
7 Science Literature out there that proves that no one is stopped
8 from voting because of photo ID requirements.

9 And I want to put on the screen Plaintiff's Exhibit 38.
10 Plaintiff's Exhibit 38 is an article in the Peer Review
11 Literature called Effects of Identification Requirements on
12 Voting Evidence from the Experiences of Voters on Election Day.
13 The author of this article is Professor Steven Ansolabehere,
14 Harvard University. You may recognize that name.

15 Professor Ansolabehere is the Justice Department's lead
16 expert in this case. And his report in this case is about
17 something else, a database match he did. It's not about his
18 actual academic work which is about the effects of voter ID
19 laws and parties published quite a few articles on it, and
20 these articles and his research show that photo ID requirements
21 like Senate Bill 14 actually have no effect on anyone's right
22 to vote.

23 So let's look at the conclusions of this article after I
24 describe for you what he did. Professor Ansolabehere runs a
25 study, a survey called the CCES. This is a survey of voting

1 behavior of voters. And as he's in charge of the survey which
2 by the way he runs in conjunction with Professor Daron Shaw of
3 the University of Texas. That's Texas' expert in this case.
4 They worked together on the survey, Professor Ansolabehere runs
5 it, Professor Shaw runs the Texas portion.

6 What the survey does in 2006 and 2008 and will do again
7 in 2012, didn't in 2010 unfortunately, is ask people when they
8 go to the polls were you asked for photo ID. And people will
9 say yes, an increasing more number of people as more and more
10 states adopt laws like ours say yes, and if they say yes, the
11 survey questioner say well, were you allowed to vote?

12 And in reporting on these results in 2009 in the Peer
13 Review Literature in Plaintiff's Exhibit 38 the DOJ's expert
14 said, and I've got it here on the screen. It's from the third
15 page of the article, but the actual denials of the votes in
16 these two surveys suggest that photo ID laws may prevent almost
17 no one from voting.

18 And of course, the two states that had photo ID laws at
19 this time when this research was done were Indiana and Georgia.
20 The Court is very familiar with that. So it might behoove us
21 to take a look at the results of these surveys with respect to
22 Indiana and Georgia.

23 I'm going to show you now on the screen Plaintiff's
24 Exhibit 17 which is the expert report of Professor Shaw which
25 has the survey results.

1 You can see in figure 6 who's asked to show
2 identification. Indiana and Georgia are there and it's
3 essentially everyone, 99 percent. That makes sense because
4 they're mandatory photo ID states, of course everyone is asked
5 for photo ID.

6 Texas is different, 60, 40, that's because under current
7 law some voters are asked for ID but not all. That will change
8 of course if you preclear Senate Bill 14. Everyone will be
9 asked for ID in Texas going forward starting this November.

10 So everyone is asked for ID in Indiana and Georgia in
11 the 2008 in the CCES. And figure 7 shows us were you allowed
12 to vote? Well, in Indiana 98 percent say I voted. Two percent
13 say yes, I was allowed to vote. And zero percent said no, I
14 was not allowed to vote. And in Georgia the numbers are
15 similar just a shade of one percent said no, I was not allowed
16 to vote.

17 So the CCES shows for Indiana and Georgia photo ID laws
18 stopped absolutely nobody or a miniscule number from voting.

19 Well, you might think in your first response may very
20 well be photo ID laws may stop nobody at the polls because the
21 people who show up to the polls know about the law and they
22 already have photo ID because they know they're not going to be
23 allowed to vote without it. So a photo ID law might have an
24 effect by discouraging people from showing up at the polls.

25 And the good news is Professor Ansolabehere thought

1 about that too in 2009. He asked that question. He said one
2 rejoinder to my findings that no one was stopped from voting
3 here is that the very presence of ID laws may discourage some
4 voters from even attempting to vote.

5 The DOJ's expert goes on, looks at the survey data and
6 he says only 7 of 4,000 people, less than two-tenths of one
7 percent of the electorate, could be considered non voters at
8 least in part because of voter identification. And for the
9 Court's benefit those people also said they had other reasons
10 for not voting like they forgot and the weather was bad.

11 And to bring it back to Georgia and Indiana so you have
12 that data from 2008 as well, we can go back to Professor Shaw's
13 report which pulls out that response from Georgia and Indiana
14 and in those two states the first reason given for not voting
15 the highest with both states was I'm not registered. That the
16 least common reason next to I forgot was I did not have the
17 correct form of identification, that was one percent both
18 Indiana and Georgia. These laws also don't discourage anyone
19 from coming to the polls, that's not correct.

20 So what does the DOJ say in response to this social
21 science research? It's not just Professor Ansolabehere
22 although we like to point that one out because he's the DOJ
23 expert. There are other papers showing no turn out reduction
24 showing no effect to these laws.

25 Some papers even show a modest increase in turn out as a

1 result of these laws, but the body of the literature shows no
2 real effect on turn out. There are some papers from groups
3 like Brennan Center that purport to show a turn out reduction.
4 But the DOJ's response and its expert response is to cite one
5 paper from one research group at Caltech, the Alvarez Research
6 Group, that shows a modest turn out reduction with the adoption
7 of strict photo ID laws.

8 And the good news for us is that Professor Ansolabehere
9 talked about this too in Plaintiff's Exhibit 38, the critical
10 2009 Ansolabehere article on the social science article on
11 voter ID. Here's what he says. First, he repeats his findings
12 approximately half of all people are asked for ID. Half
13 because it's nationwide and not everybody had mandatory photo
14 ID in the survey.

15 JUDGE WILKINS: What exhibit is this from, counsel?

16 MR. MORTARA: Plaintiff's Exhibit 38, Your Honor.

17 Approximately half of all people are asked for ID when
18 they vote but almost no one reports subsequently being denied
19 to vote or reports that lack of ID was a reason for not
20 attempting to vote.

21 Then he goes on and says most studies are aggregate
22 election returns, those are turn out studies, are consistent
23 with my non findings, findings but some researchers do find that
24 the state law used score response to turn out rates. He cites
25 the Alvarez Group I mentioned from Caltech. He says why the

1 inconsistency?

2 One possibility is methodological. Aggregate indicators
3 whose turn out studies don't measure who is asked for ID and
4 run the risk of committing the ecological fallacy; survey data.
5 His data is superior.

6 First he says surveys are better because they reveal
7 whether voter identification requests are in fact an instrument
8 of exclusion. He is looking at people who actually vote as
9 opposed to doing turn out studies and just saying what's the
10 turn out year to year and trying to control multiple variables.

11 And he mentioned this thing called the ecological
12 fallacy. The Court may be familiar with, I had to learn what
13 it was. What that means is you can't take a group statistic
14 and infer an individual characteristic.

15 So for example, if a study shows that 70 percent bald
16 men in Chicago like soccer, you could not infer from that
17 because I am a bald man and I am from Chicago that there's a 70
18 percent chance that I like soccer.

19 Similarly the Alvarez shows that there's a 5 percent
20 turn out reduction because of photo ID you cannot infer from
21 that the individual has a 5 percent lesser chance of voting
22 because of that study. In fact, nobody may have a lesser
23 chance of voting.

24 So Professor Ansolabehere says well, maybe, maybe these
25 studies can be harmonized, both sets might be right. There's

1 two possible explanations. This is again Plaintiff's Exhibit
2 38, Your Honor, the next paragraph.

3 He says well, the first explanation might be that ID
4 requirements might discourage, deter people from voting. We've
5 already talked about that.

6 And the second explanation is the really good one, he
7 says identification requirements may reduce the incidents of
8 voting among those not registered or eligible to vote; that is,
9 fraud.

10 Well, he doesn't just tell us what the possibilities
11 are. Professor Ansolabehere, the DOJ expert evaluates those
12 possibilities in his Peer Review research. He says the first
13 of these explanations discouragement looks like it has no basis
14 in fact as the 2008 survey found that almost no one reported
15 that they stayed away from the polls for want of appropriate
16 identification.

17 And he goes on to say that leaves the tantalizing yet
18 unresolved possibility that the differences between aggregate
19 results and individual's experiences at the polls may reflect a
20 reduction in fraud. In other words, these laws may be doing
21 what it says on the box. Stopping voter fraud.

22 Now, I don't have a lot of time to go through all of
23 Professor Ansolabehere's research and all of his papers. I
24 want to be fair to him. He has other findings. Amongst his
25 other findings are he finds that he doesn't think that voter

1 fraud is very common because his survey research shows no one
2 is being stopped at the polls. That's one of his findings.

3 Another one of his findings is he doesn't believe that
4 photo ID laws enhance competence in the electoral system, he
5 has done some survey research there. We dispute that last
6 finding but I want to be fair to his papers. When you go
7 through them you will see these three findings repeated over
8 and over.

9 The top line finding is the important one for us. No
10 one is stopped from voting by these laws, much less any
11 racially discriminatory result. And that's the second reason
12 the Senate Bill 14 has no prohibited discriminatory effect. It
13 has no effect on voting at all. It will not. And that's what
14 the social science research shows.

15 So where is the DOJ's case. The DOJ's case rests on a
16 flawed analysis purporting to show that there is a disparity
17 between Anglos and minority voters in terms of state ID
18 possession in Texas. According to the DOJ, this is their legal
19 theory, we don't agree with it, if there's any ID disparity in
20 Texas that ipso factor proves prohibited discriminatory effect,
21 they just win.

22 There's two problems with that. First, as a matter of
23 fact, the database analysis that their experts perform is so
24 irretrievably flawed it doesn't prove anything. And the
25 evidence will show that in fact the only evidence in this case

1 looks comprehensively at ID possession, that evidence will show
2 that there is no actual ID disparity between the races or
3 ethnic groups in Texas.

4 The second reason DOJ's analysis is flawed is that even
5 if there were an ID disparity which there isn't, that doesn't
6 automatically mean there's a prohibited discriminatory effect.
7 That's actually the fourth reason. I'm going to get to it
8 after we deal with the ID database matching exercise.

9 Excuse me, Your Honor.

10 (Pause.)

11 As I said, the DOJ's response is what it calls a match
12 analysis, a database match by its expert Professor
13 Ansolabehere. As an initial matter --

14 JUDGE COLLYER: Just for my note sake, are you still
15 on two or are you up to three?

16 MR. MORTARA: Your Honor, I am on three. I am sorry.

17 JUDGE COLLYER: That's all right. I thought you were
18 moving to three and then I just wanted to check.

19 Go on.

20 MR. MORTARA: When I started with three, I kind of
21 mentioned four too.

22 JUDGE COLLYER: Yes, you did. That's okay, I
23 understood that but I'm on three.

24 Go on.

25 MR. MORTARA: Thank you, Your Honor.

1 As an initial matter the DOJ's analysis does not purport
2 to even address all forms of Senate Bill 14 acceptable photo
3 identification. There are six forms of Senate Bill 14
4 acceptable identification.

5 State ID. State driver's license, state license to
6 carry concealed weapon permit, and then there are three federal
7 forms of ID. Passport, a citizenship certificate with
8 photograph, and a military ID with a photograph.

9 So the DOJ's analysis doesn't look at the three federal
10 forms. It only looks at the three state forms of ID and this
11 is highly problematic and you don't have to look anywhere else
12 than Professor Ansolabehere again because he actually asked the
13 DOJ for access to the federal lists for passport holders and
14 citizenship certificates and he was told no.

15 Well, he proceeded with his half a loaf analysis with
16 just the state IDs and there's a lot of problems with that
17 analysis, but I want to start with one because we don't, we're
18 not writing on a clean slate here. This is not the first time
19 an expert has tried to do a database base match analysis
20 between a driver's license database and a voter registration
21 database and come up with a highly inflated and unreliable
22 number.

23 No, that actually happened in Crawford. Your Honors may
24 recall that in Crawford the Supreme Court made a reference to
25 an analysis that purported to show that several hundred

1 thousand voters in Marion County Indiana were registered but
2 did not have photo ID. And that the District Court in Crawford
3 had rejected that analysis as unreliable.

4 Well, we should look at what the District Court actually
5 said about that analysis. And I've got on the screen now a
6 quote from that District Court opinion which is found for Your
7 Honor's benefit at 458 F Supp 2d 775 and the quote here is from
8 803. Race failed to correct for voter roll inflation. This is
9 the opinion rejecting the plaintiff's expert in that case.

10 The major flaw in the database match here Brace's report
11 is that while he concedes there is some inflation of the Marion
12 County voter rolls, his analysis includes absolutely no attempt
13 to correct for such surplusage inflation of the voter rolls
14 directly impacts Brace's conclusions because his analytical
15 method consists of tabulating and characterizing voter
16 registrations that cannot be matched to BMV, that's Indiana's
17 DMV records. Inflated voter registration thus leads to
18 inflated conclusions regarding a number of voters without a
19 state driver's license or identification card whom Brace claims
20 to have identified. Concludes borrowing the app computer
21 expression, garbage in, garbage out.

22 Well, we're not writing on a clean slate here but
23 Professor Ansolabehere admits, he admits that his 1.5 million
24 person data set of people he says do not have state ID includes
25 by his own admission over 50,000 people who are dead. Not just

1 that, it includes, he will tell you that he doesn't know how
2 many, but it does include hundreds of thousands of people who
3 have moved out of the State of Texas and are therefore no
4 longer eligible to vote.

5 But the important thing here is because this is what the
6 Crawford District Court found was so unreliable about the
7 database analysis in that case and the Supreme Court commented
8 on it in its opinion; is that Professor Ansolabehere under
9 oath, I'm showing you on the screen now his testimony, admitted
10 that he did exactly the same thing, precisely the same thing
11 that the District Court found so troubling in Crawford.

12 "Question, Professor Ansolabehere, you did not engage in
13 any effort to identify records on the Texas voter registration
14 database of people who were in fact ineligible to vote, did
15 you?

16 Answer, no.

17 Question, you made no effort to clean the voter
18 registration database of voters who were ineligible did you?

19 Answer, no. Of voters who were ineligible."

20 He did the exact same thing that the trial court in
21 Crawford found so unreliable and tossed the database match in
22 that case.

23 There's another serious problem with Professor
24 Ansolabehere's analysis that's specific to this case and didn't
25 come up in Crawford. And that is having to do springs from a

1 feature of our voter registration database.

2 Our voter registration database is interesting. We have
3 had different rules over time as to what you need to provide
4 when you register to vote. As a result, you don't have the
5 exact same data on everybody in our database.

6 And as I think the Court is aware from prior experience
7 in this case, for about 45 percent of our voter, of our 13
8 million registered voters we have full nine digit social
9 security information, 45 percent under half. So the other 55
10 percent we don't have that full nine digit social security
11 number.

12 Professor Ansolabehere when he did his match he used
13 nine digit social security numbers. So for that 45 percent he
14 could do it, he could try to find a match with a social
15 security number. But for the big part I'm going to show you on
16 the screen, pie chart shows this. But for the big part of the
17 pie, the 55 percent that don't have full social security
18 numbers, the only thing that DOJ and it's expert did were match
19 people by exact name and date of birth. You had to have
20 exactly the same name in the voter registration database as you
21 had in the driver's license database.

22 It doesn't take too long to figure out that there might
23 be some problems with this. A good example would be my dad.
24 My dad's name is David. But he likes to go by Dave and if he's
25 David in the driver's license database and he's Dave in the

1 voter registration database and he's in the big part of the pie
2 where there's no nine digit social security number he ends up
3 in Professor Ansolabehere's 1.5 million list of people that
4 don't have ID even though he does. It's just that simple.
5 Dave versus David.

6 Now I'm sure you are thinking, I'm not worried too much
7 about that, it's going to happen to everybody, it's going to
8 all kind of come out in the wash and Professor Ansolabehere's
9 number might be a little too high but we can still trust him.

10 Unfortunately, no. Because there's a big group of
11 people who have these name mismatches more often than others.
12 There's actually two groups. The first is more obvious than
13 the second. That is of course women. Because women in this
14 country sometimes change their name when they get married and
15 as a result, they might have a maiden name in one database and
16 a married name in another.

17 So again to draw from my family, my wife's name is Mary
18 Swietnicki. If my wife is Mary Swietnicki on her driver's
19 license but had chosen to change her name when we got married,
20 she didn't, and then became Mary Mortara in the voter
21 registration database, she has a driver's license, but now all
22 of a sudden she's in the big pie, she doesn't have a nine digit
23 socials like over half of our registered voters she ends up in
24 Professor Ansolabehere's inflated and flawed list of 1.5
25 million people allegedly without ID who are registered to vote.

1 And before you get concerned that if Mary and I move to
2 Texas and if she changed her name to Mortara and had a mismatch
3 between the two databases she wouldn't be allowed to vote under
4 Senate Bill 14, don't worry about it.

5 Senate Bill 14 does not require exactness between the
6 name on the photo ID and the name in the voter registration
7 rolls. The law requires substantially similar and the Texas
8 Secretary of State you're going to hear about it today has
9 promulgated regulations to poll workers to deal with former
10 names, maiden names, alternative nicknames like David, Dave, it
11 is not going to be a problem under Senate Bill 14.

12 So we know from common sense that for the 55 percent of
13 people in the big part of the pie don't have nine digit social
14 security numbers that Professor Ansolabehere's requirement of
15 exact name matching is going to be problematic for women.

16 Well, let's do a scientific experiment together. On the
17 next slide you can see that in the Texas registered voters
18 database the gender distribution is 49 percent female, 42
19 percent male. That's not uncommon, nationwide there's a
20 slightly higher proportion of females registered than men. Of
21 course, it doesn't add up to a hundred, that's because we have
22 people in our voter registration database of uncertain gender
23 because they didn't report it or we don't have it. That's a
24 gender gap of 7 percent in our Texas registered voters database
25 overall 13 million.

1 On the DOJ's list of people who allegedly do not have
2 state ID who are registered to vote, the gender distribution is
3 53 percent female, 36 percent male and the gap goes from plus 7
4 to plus 17. It defies common sense and all intuition to
5 believe that women are dramatically less likely than men to
6 have the state issued photo identification and this bias in
7 Professor Ansolabehere's result is only explicable by the fact
8 that he required exact name matching for the big part of the
9 pie, over 50 percent of our people that don't have nine digit
10 social security numbers.

11 And Professor Ansolabehere is well aware of this
12 phenomenon and did nothing to investigate it or explore it
13 further or to even think that it called into question his
14 results. Of course it does. It's just not believable.

15 Well, I said there were two groups that Professor
16 Ansolabehere's matching was biased against. I said the second
17 one was not as obvious, but I think when we talk about it
18 you'll see that it is.

19 The second group is Hispanics. What the evidence is
20 going to show is that when you check to see who mismatches
21 first name last name more between driver's license and the
22 voter registration base, it turns out that those with Spanish
23 sir names Hispanics mismatch dramatically more often on first
24 name last name than non Hispanic.

25 You can think of a few reasons for that. One is the

1 Spanish name in one database and an English name in other.
2 Another is moving a last name to a middle name. Another might
3 be having spaces in the last name in one database and not in
4 another. Believe it or not if you are Dela Cruz with all
5 spaces in between the words in one database but Dela Cruz with
6 no spaces in the other, Professor Ansolabehere did not count
7 that as a match and you end up in the no ID setting even though
8 you have a driver's license just with spaces. You can see why
9 it's possible that the match would be biased against Hispanics
10 and that's what the evidence is going to show.

11 Professor Ansolabehere despite seeing the red flag of
12 the gender bias which he knew about here is what he said under
13 oath about looking for an ethnic bias in his matching in the
14 big pie, the 55 percent.

15 "You have no information about whether your match sweeps
16 that used names and date of birth might have been correlated
17 with race in such a way as to produce the very
18 disproportionality you find in your conclusions do you?

19 Answer, correct. I did not study that."

20 He got the warning sign of the gender bias and explored
21 not at all the possibility of ethnic bias in his matching
22 algorithm irretrievably flawed from the outset because he did
23 the same thing that Crawford did the District Court said you
24 can't do, they didn't clean our voter registration file of
25 ineligible voters but flawed secondarily because it's biased.

1 Now I have spent a lot of time talking about women and
2 Hispanics but not a lot of time talking about African Americans
3 and they're at issue in this case too. And Professor
4 Ansolabehere also found in his proportionality the state ID
5 possession with African Americans, but we don't ask people when
6 they are registered to vote, and we are quite proud they don't,
7 what their race is. So how did Professor Ansolabehere figure
8 out what race everybody was?

9 Well, he hired a third party political consultant
10 company called Catalyst and Catalyst has what it says is a
11 proprietary scientific algorithm for guessing somebody's race
12 based on their name and where they live. That's what they say
13 they do.

14 Now Professor Ansolabehere doesn't have access to that
15 algorithm but he bought their services and they took the list
16 of voters that Professor Ansolabehere gave them and what
17 Catalyst did was they tried to guess what people's race was by
18 on the basis of their name.

19 The thing is Professor Shaw of the University of Texas
20 conducted a survey of the, set of data that we got from
21 Professor Ansolabehere's survey. We called them up, it's a
22 statistically valid scientific survey.

23 One of the things we did we called up a valid sample of
24 the people Professor Ansolabehere and his friends from Catalyst
25 used their racial demography analysis to call black and we

1 asked them are you black? And a third of them said no, what
2 are you talking about? One-third of the people in the survey
3 that Professor Ansolabehere said were black said they weren't.
4 That's how unreliable and shoddy that the third party campaign
5 data service that Professor Ansolabehere used is. One-third.

6 Now that gets us to the State's evidence, Your Honor.
7 And you're going to hear a lot about a survey that Professor
8 Shaw directed and ran of the Ansolabehere, allegedly 1.5 and
9 1.9 million effected voters. We did three surveys; a general
10 survey, a Hispanic survey and the survey of people that
11 Professor Ansolabehere said were black two-thirds of which
12 actually were.

13 And what the survey showed is that 90 percent of the DOJ
14 list have Senate Bill 14 acceptable ID already. We didn't just
15 survey half a loaf. No, Professor Shaw asked about all forms
16 of federal ID.

17 You know what the survey found? The survey found
18 something that when you think about it should be obvious. The
19 survey found that Hispanics had passport and citizenship
20 certificates in much higher numbers than Anglos. Now it took
21 me a little while to realize myself how silly I'd been for even
22 thinking the opposite and here is the reason.

23 Texas is a little unique in a lot of ways. One of the
24 ways in which we're unique is we share an enormous land border
25 with our neighbors to the south Mexico. All along that Texas

1 border in the region of Texas there that population is
2 overwhelmingly Latino in Texas and also overwhelming U.S.
3 citizens. And all along that border there are cities, El Paso,
4 Laredo, the great City of Eagle Pass and across the border from
5 those cities are their sister cities in Mexico. Juarez for El
6 Paso, Nuevo Laredo for Laredo. While our two countries are
7 separated by a river, there are bridges across that river and
8 what goes over those bridges, cars. And what do you need since
9 2010 to go back and forth to Mexico? A passport.

10 So when someone from El Paso needs to go to Flores to
11 visit their family, they have to have a passport now. And it's
12 totally unsurprising that Hispanics in Texas have passports at
13 significantly higher numbers than Anglos because somebody who
14 is an Anglo living up in East Texas who wants to drive a
15 hundred miles to go see their family member does not
16 necessarily need to cross the Rio Grand River into Mexico.

17 It's also no surprise that Hispanics have citizenship
18 certificates in much higher numbers. The population explosion
19 in Texas is Latino, it stands to reason that data shows that
20 people naturalizing are mostly Latino, they are the ones with
21 citizenship certificates. And this common sense, what is now
22 common sense I think intuition that Hispanics might have
23 federal ID more than Anglos is something that the DOJ expert
24 could not investigate, he wanted to. He asked for the data,
25 they wouldn't give it to him.

1 And our study shows, Professor Shaw's survey shows that
2 Hispanics actually have these federal forms of ID in much
3 higher proportion than Anglos and blacks. What the study shows
4 overall is there's no racial difference whatsoever in the
5 possession of Senate Bill 14 acceptable ID.

6 Even if you thought that this case turned on an ID
7 disparity, it doesn't because of the Social Science Literature.
8 Even if you thought that, there's no ID disparity. But let's
9 back out one step.

10 Let's imagine the DOJ proved to you to your satisfaction
11 even using the database analysis that didn't cut out the
12 ineligible voters, is biased against matching Hispanics and
13 deployed a third party research firm to wrongly guess whether
14 people were black, even if you thought that was an okay
15 analysis, the social science literature using surveys not
16 database matching which you don't see in the Social Science
17 Literature in Indiana and Georgia. The Social Science
18 Literature in Indiana and Georgia using a survey shows that
19 there is a disparity in those two states between African
20 Americans and whites in terms of state ID possession. That's
21 what the Social Science Literature shows.

22 The same literature shows this has no bearing whatsoever
23 on anybody's voting behavior because people who show up at the
24 polls either already have ID or they go and get free ID. In
25 other words, the fact that there's an ID disparity produces no

1 result at the polling place, no result in the form of
2 discouraging people, that's what Professor Ansolabehere already
3 said and no result in terms of denying people the right to
4 vote. So even if there were an ID disparity, there is no
5 effect for purposes of Section 5.

6 Judge Collyer, for your benefit I just went back to
7 number two.

8 JUDGE COLLYER: That's okay, I followed that.

9 MR. MORTARA: Okay.

10 We surveyed the whole loaf, not the half a loaf database
11 match that's running into the same problems we have been
12 knowing about since Crawford. We looked at the whole loaf and
13 there's no ID disparity.

14 Now, DOJ has some criticisms of the Professor Shaw's
15 survey. One thing that you will hear from Professor
16 Ansolabehere is that Professor Shaw is an expert on surveys.
17 They are actually good friends and close colleagues. And DOJ's
18 main criticism of Professor Shaw's survey is he had a hard time
19 reaching people. You are calling people, calling and calling,
20 you had a hard time reaching them.

21 We got our list from the DOJ the 1.9 million registered
22 voters that they say don't have ID, and it's not surprising
23 that we had trouble reaching people because of the same first
24 problem with Professor Ansolabehere's database match. He
25 didn't clean the voter rolls. He admits he has 50,000 dead

1 people and hundreds of thousands of people who have moved on
2 his list.

3 Well, if you are trying to call somebody who is dead or
4 somebody who has moved out of the State of Texas in a survey of
5 specific people who are Texas registered voters, that's quite
6 difficult and that's why we had a hard time getting ahold of
7 people and moreover the recent social science data from the
8 Pugh Center says when you have a low response rate from a
9 telephone survey that is no reason, none at all to disregard
10 the results. But I'll let Professor Shaw come here and defend
11 his survey himself because he is the acknowledged expert.

12 The last reason, the fourth Judge Collyer, for the DOJ's
13 for our ability to prove that this law has no prohibited
14 discriminatory effect is really a legal one. And I won't spend
15 a lot of time on it. Even if you did not believe the Social
16 Science Literature that shows no one stopped from voting and
17 even if you bought into the DOJ's triple flawed analysis, the
18 database match, even if you came to the conclusion that with an
19 ID disparity that might be a problem under Section 5, that's
20 not enough because Section 5 says on account of race or color.
21 And because of membership in a language minority group and
22 those words on account of race or color are exactly in Section
23 2 as well, and they spring from the 15th Amendment which is the
24 source of Congress' authority here.

25 And what the Courts have said in the context

1 particularly of Section 2 said those words require a showing
2 causation or nexus or some connection between a racial
3 disparity and a prohibited discriminatory result for race
4 itself or race discrimination.

5 JUDGE TATEL: What's the difference in between the
6 purpose prong and the effect prong of the statute?

7 MR. MORTARA: Your Honor, let's take for example,
8 redistricting I think is the best example. In redistricting
9 and in a retrogression analysis if the state changes the map in
10 such a way so as to decrease the ability of minority voters to
11 elect their candidates of choice that runs afoul of the effect
12 prong, we know that.

13 Well, you might ask what does the drawing lines have to
14 do causation wise with race. And the answer is Thornberg
15 against Gingles in Section 2 imported into Section 5 requires a
16 showing of racially polarized voting and racially polarized
17 voting is the test for showing whether people are voting their
18 race instead of for instance their party.

19 So even in the redistricting context with facially
20 neutral drawing of map lines there is always a connection to
21 race itself with the requirement of showing a racially
22 polarized voting even if there's no discriminatory purpose.

23 JUDGE TATEL: I don't want to take up too much of
24 your time because it comes out of your trial time.

25 So then why do you need your first three points? I

1 mean, if you, I take it the State's position is that this was
2 not passed, SB 14 was not passed with a, for racial reasons and
3 as I understand the argument you just made, doesn't that on
4 your theory also resolve the effects test?

5 MR. MORTARA: No, Your Honor, because under our
6 theory we would still have to show that there is no
7 discriminatory effect that can be tied to race or color, that
8 has nothing to do with race discrimination. You can, like I
9 said --

10 JUDGE TATEL: So your point would be so that if the
11 evidence showed, suppose the evidence showed that and I'm not
12 talking about Texas here. I just want to ask this question
13 because I want to make sure I understand the evidence I'm going
14 to be hearing from you.

15 Suppose the evidence showed that it wasn't so easy to
16 get, suppose the evidence showed that it wasn't so easy to get
17 an EIC because, either because the underlying documentary
18 requirements were expensive or was difficult to get to the
19 places where you needed to get them and that poor people were
20 disproportionately minority.

21 Your theory I take it would be that's not a Section 5
22 problem because it's based on poverty?

23 MR. MORTARA: It's not necessarily a Section 5
24 problem.

25 JUDGE TATEL: Why not necessarily? How could it be?

1 MR. MORTARA: Your Honor, the problem with your
2 hypothetical is that there's no evidence connecting the greater
3 difficulty of getting any IC to race, so the example I'd like
4 to use --

5 JUDGE TATEL: That's why I just asked you the
6 question.

7 Under my hypothetical even though -- let's assume that
8 you had witnesses who testified, uncontroverted testimony that
9 it is more difficult for poorer people to obtain a photo ID.
10 All right. And let's assume the evidence also showed
11 uncontroverted that minorities were disproportionately poor,
12 not a Section 5 case, right.

13 MR. MORTARA: Not a Section 5 case unless the
14 impoverishment of the minorities in question is fairly
15 traceable to race discrimination or race itself.

16 The example I want to use with Your Honor's literacy
17 test. A literacy test if it's given in an area for instance,
18 where segregated schooling had created a situation through race
19 discrimination that caused the literacy test to have a
20 disparate impact, it absolutely would violate the
21 discriminatory effect prong even if it didn't have a
22 discriminatory purpose.

23 JUDGE TATEL: If I don't agree with you, and I'm not
24 saying that I do or not, am I going to hear in your testimony
25 evidence that in fact the SB 114 does not have a discriminatory

1 impact based on the fact that it's more expensive to obtain the
2 underlying documentation and that minorities are
3 disproportionately poor? Will we hear an answer to that? Just
4 in case I don't agree with you on your legal theory.

5 MR. MORTARA: What the evidence will show is it's
6 really quite difficult to find anyone who is registered to vote
7 that doesn't have photo ID. The defendants have scoured the
8 entire state; leaflets, e-mails, websites. They have come up
9 with very few people essentially zero. You are going to hear
10 from a couple of 18 year olds and very few others who don't
11 already have photo ID.

12 So the problem with Your Honor's hypothetical is, there
13 are almost no people who are registered to vote in Texas who
14 don't already have photo ID. And doing any kind of analysis of
15 the tiny group that doesn't have photo ID and trying to show
16 that there's some racial disproportionality in the ability to
17 obtain it and then trying to show that that doesn't have
18 anything to do with factors that are not connected to race
19 discrimination is an impossibility. So the evidence you'll
20 hear is that virtually everyone already has a photo ID.

21 JUDGE TATEL: Just so I understand your theory, if we
22 have a state, we're not talking about Texas, okay. A different
23 state and it's very expensive, it costs money to obtain the
24 underlying documentation. The centers where you obtain these
25 are difficult to reach.

1 And the witnesses testified that this puts a burden on
2 poor people and a hundred percent of the poor people in the
3 state are minorities and a hundred percent of those who are
4 poor are minorities. Your theory is that that's not a Section
5 5 problem unless it's also evidence that that poverty is
6 traceable to intentional discrimination based on race, right?

7 Is that your theory?

8 MR. MORTARA: Your Honor, the answer is that is our
9 theory, but the hypothetical you've constructed --

10 JUDGE TATEL: Yes.

11 MR. MORTARA: -- is so wild to the point that of
12 course it would be a discriminatory purpose because if somebody
13 knew that and then passed a law anyway, of course. If you knew
14 that you were passing some law that exclusively effected
15 minorities, and you knew that and you did it anyway --

16 JUDGE TATEL: Suppose the evidence weren't that
17 clear?

18 MR. MORTARA: Well, then we're getting into the
19 middle ground which is why I did what all appellate advocates
20 are told to do which is to directly answer your question yes.

21 JUDGE TATEL: Well, what's the answer to the other
22 question then?

23 MR. MORTARA: Now I'm lost, Your Honor.

24 JUDGE TATEL: Well, the other question is, go back to
25 the question that I asked right before that which is suppose

1 it's simply significantly disproportionate and there's no
2 evidence at all of motive?

3 MR. MORTARA: We win.

4 JUDGE TATEL: Unless there's evidence that the
5 disproportionate, the disproportion is attributable -- in other
6 words, that the disproportion based on poverty is attributable
7 is because the poverty is attributable race, right?

8 MR. MORTARA: Absolutely correct, Your Honor.

9 JUDGE TATEL: I just want to understand your theory.
10 I see, okay.

11 MR. MORTARA: Just to elaborate, that's what all of
12 the Section 2 cases say. Taking your, I use the word wild,
13 but I will use a more mild word.

14 JUDGE TATEL: No, it was designed to be wild to
15 identify the issue.

16 MR. MORTARA: Then with your permission, taking your
17 wild hypothetical.

18 JUDGE TATEL: Yes.

19 MR. MORTARA: The situation in Indiana which is a lot
20 more the middle ground where there is an ID disparity and the
21 birth certificate cost money in Crawford. There's no question
22 under your analysis going the other way, take the opposition by
23 me, that law violates Section 2 and the Justice Department
24 hasn't brought a Section 2 case against Indiana and neither has
25 anybody else because that's not the law. Under Section 2 you

1 have to show a connection and nobody could.

2 JUDGE COLLYER: It's also not covered by the statute
3 is it Indiana?

4 MR. MORTARA: Every state in the country is covered
5 by Section 2, Your Honor.

6 JUDGE COLLYER: You're absolutely right, forgive me.

7 JUDGE TATEL: This is my last question because I want
8 to hear your evidence.

9 But there was no allegation of race in Crawford was
10 there?

11 MR. MORTARA: No.

12 JUDGE TATEL: No.

13 MR. MORTARA: But that doesn't mean that somebody
14 can't come today or the Justice Department can't file a Section
15 2 case.

16 JUDGE TATEL: Maybe they didn't think of that in the
17 evidence.

18 MR. MORTARA: I'm going to finish up, Your Honor, if
19 that's okay.

20 JUDGE TATEL: Yes, please.

21 MR. MORTARA: I do want to spend just a brief amount
22 of time on discriminatory purpose. The DOJ admits that it has
23 no direct evidence of discriminatory purpose. The Texas
24 legislature cited the Crawford approved purposes for passing
25 Senate Bill 14 in deterring and detecting voter fraud and

1 safeguarding voter confidence and promoting civic perception
2 and valid integrity. In fact, those photo ID requirements were
3 the recommendation of the Carter Baker Commission convened
4 after the 2000 Presidential election which recommended the
5 states adopt mandatory photo ID requirements.

6 Despite these valid purposes the DOJ says well, in Texas
7 you're acting on pretext and your real motivation is race
8 discrimination and there's lots of examples of the DOJ taking
9 the evidence and trying to shoehorn it into a discriminatory
10 purpose case.

11 I want to just focus on one because of taking some of my
12 time having great debate with Judge Tatel. That one comes from
13 Arlington Heights. Arlington Heights is a great case. It
14 gives you a list of factors to try and figure out whether
15 something was done with discriminatory purpose. But Arlington
16 Heights is also a trap for the unwary because looking at those
17 factors without reflection or wisdom or common sense and
18 leading to a sort of ipso facto conclusion of race
19 discrimination from them is a real danger when you look at the
20 list.

21 The DOJ's favorite on this list from my own experience
22 is unusual procedures. So if the DOJ finds unusual procedures
23 in Section 5 litigation with Texas they say ah-ha, race
24 discrimination and the favored example in this case is that in
25 the Texas Senate it's ordinarily a tradition that to bring a

1 bill to the floor for a majority vote you have to have a
2 two-thirds vote to suspend the rule. To actually break the
3 rules to bring the bill up. That tradition operates most of
4 the time in the Texas Senate.

5 In 2005 and 2007 the Democrat minority in the Texas
6 Senate used their power to block a photo ID bill from reaching
7 up or down vote in Texas Senate. So in 2009 the Republicans
8 said we're tired of this. We're tired of you blockading
9 popular legislation. They said we're not going to do the
10 two-thirds tradition for photo ID law, and it passed in the
11 Texas Senate in 2009 and 2011.

12 Now the DOJ says well that's an unusual procedure.
13 Therefore, da, da, da, race discrimination. And that's using
14 Arlington Heights without any common sense or wisdom in
15 between. Because what's really going on is that the Texas
16 Democrats in the Senate are blockading legislation that is
17 overwhelmingly popular from reaching an up or down vote and the
18 Republicans are acting in response to that.

19 Now you don't have to take my word for it. You can take
20 the word of the most important witness in the case Professor
21 Ansolabehere and his 2007 article in the NYU Annual Survey of
22 American Law where he's talking about voter ID. Again a
23 subject of some interest to him, just not in his expert report
24 in this case.

25 Perhaps the most surprising demographic or political

1 comparison arose with race and the surprise was the lack of
2 division. Over 70 percent of whites, blacks, and Hispanics
3 support the requirement. Black and Hispanic voters did not
4 express measurably less support for voter ID requirements than
5 whites. Such findings suggest the Congressional Black Caucus
6 and the Democratic party leadership may have been wholly out of
7 step with the analogous segments of the electorate on the
8 issue.

9 The reason for procedural wrangling in the Texas
10 legislature is that Texas Democrats like national Democrats
11 have been wholly out of step with their own electorate. That's
12 why we had to not use the two-thirds tradition. The people
13 want photo ID and we gave it to them.

14 Now, discriminatory purpose case here does not turn on
15 the credibility of any one witness. It doesn't turn on whether
16 you believe Representative Rafael Anchia versus Representative
17 Jose Aliseda, both of whom will testify.

18 It turns instead on the credibility of hundreds and
19 thousands and millions of black and Hispanic voters in Texas
20 and all across this country, but particularly in Texas who are
21 in favor of Senate Bill 14 and photo ID requirements like it
22 and who the Justice Department say are despite the fact that
23 all of these people support this legislation, the Justice
24 Department says we did it with discriminatory purpose and it's
25 actually going to hurt them.

1 The evidence is going to show Senate Bill 14 has neither
2 the purpose or effect of denying or abridging the right to vote
3 because of race, color or membership in a language minority
4 group and on Friday, my partner Mr. Hughes is going to come
5 back and ask Your Honors to enter a declaratory judgment of
6 preclearance so that Texas can have a photo ID law like Rhode
7 Island, Pennsylvania, Georgia, Indiana, Tennessee, Kansas, and
8 as of just a few days ago because of a veto override New
9 Hampshire.

10 Thank you.

11 JUDGE COLLYER: Thank you, Mr. Mortara.

12 I note that it is five of 10.

13 Does anybody from the United States wish to make an
14 opening statement?

15 MS. WESTFALL: Yes, Your Honor.

16 May I approach?

17 JUDGE COLLYER: Please, Ms. Westfall.

18 Could you do me a favor, all of us, could you pull that
19 down a little closer.

20 MS. WESTFALL: Better?

21 JUDGE COLLYER: Much better.

22 MS. WESTFALL: Good morning, and may it please the
23 Court.

24 I'm Elizabeth Westfall for the Attorney General Eric
25 Holder. Before I begin with a brief opening statement, I would

1 like to introduce the trial team.

2 At the table is Meredith Bell-Platts, Brian Sells,
3 Jennifer Maranzano, Katie Blaisdell, Leo Rhoco, and we also
4 have Bruce Gear, Dan Freeman, Risa Berkower, Spencer Fisher,
5 Victor Williamson, and Angela Miller.

6 JUDGE COLLYER: On behalf of the Court, let me say to
7 all of the lawyers for all of the parties that we very much
8 recognize how hard you've been working, and we thank you for
9 all of the work that you've had to put in to get this case to
10 trial today.

11 Thank you, ma'am.

12 MS. WESTFALL: Thank you, Your Honor.

13 OPENING STATEMENT BY MS. WESTFALL

14 The evidence will show that Texas is unable to meet its
15 burden of proving the SB 14 will not have a retrogressive
16 effect. The Attorney General will present expert testimony
17 from Dr. Steven Ansolabehere, a political scientist from
18 Harvard University whose analysis demonstrates that at least
19 1.4 million registered voters in Texas lack any form of state
20 issued ID that is accepted under SB 14 and that those voters
21 are disproportionately Hispanic and black. In fact, minority
22 registered voters in Texas are two-thirds more likely than
23 white registered voters to lack an allowable state ID. These
24 disparities persist whether we look at only recent voters or
25 all registrants.

1 This evidence of this effect potentially
2 disenfranchising up to 1.4 million Texas voters
3 disproportionately minority on the day the law goes into effect
4 is essentially un rebutted and is fatal to the State's request
5 for preclearance.

6 The evidence will also show that Texas is unable to meet
7 its burden of proving that SB 14 was not motivated even in part
8 by a racially discriminatory purpose. In particular, the
9 Attorney General will call Dr. Morgan Kousser, a historian from
10 the California Institute of Technology who concluded after
11 analyzing the conduct of the Texas legislature that the
12 decision to enact SB 14 was motivated at least in part by an
13 unlawful discriminatory purpose.

14 His testimony will note that the Texas legislature after
15 a decade of dramatic growth in the State's minority population
16 one, pursued never before used procedural stratigents to move
17 the bill over the uniform opposition of minority preferred
18 legislators.

19 Two, justify the bill as a response to problems that
20 were not widespread and would not be cured by the law anyway.

21 Three, advance legislation that became progressively and
22 unnecessarily more strict over several legislative sessions.

23 And finally four, consistently rebuffed measures that
24 could have alleviated the discriminatory effect from the bill
25 with no harm to the bill supporter's stated goals.

1 Because the facts will convincingly demonstrate the
2 discriminatory purpose and effect of SB 14, Texas has raised a
3 range of legal arguments in its pretrial papers and today in
4 its opening statement that essentially seek to rewrite the
5 statutory Section 5 standard.

6 We look forward to explaining the flaws in the State's
7 contentions at the oral argument following the testimony.

8 Thank you, Your Honors.

9 JUDGE COLLYER: Thank you very much.

10 And I note that it is now 9:59.

11 All right, did any intervenor wish to make an opening
12 statement?

13 OPENING STATEMENT BY MR. ROSENBERG

14 MR. ROSENBERG: Good morning, Your Honor.

15 Ezra Rosenberg on behalf of the intervenors and I will
16 be even briefer well aware of our time.

17 I'm hesitant to even introduce my colleagues but I will
18 anyway. Chad Dunn, Gary Hebert, Adam Harris, Nancy Abudu at
19 the table.

20 In the audience are Mark Posner, Ian VandeWalker, Jose
21 Garza, Danita Judge, Tom Sanges, Jorge Sanchez, Luis Figueroa,
22 John Tanner and I'm sure I've left some out and I apologize.

23 I wish I did have the time to explain why the proofs at
24 the end of this trial it will be clear that the State of Texas
25 will not be able to bear its burden to prove both lack of

1 discriminatory purpose, any discriminatory purpose and lack of
2 retrogressive effect and the proof will show in fact that SB 14
3 was a solution looking for a problem.

4 But I don't have the time and instead, I'd just like to
5 thank the Court and acknowledge the Court for its hard work and
6 excellent shepherding of this case bringing it to trial.

7 Thank you.

8 JUDGE COLLYER: Thank you very much.

9 All right, will Texas call its first witness, please.

10 MR. MORTARA: Yes, Your Honor.

11 Texas calls Brian Keith Ingram.

12 PLAINTIFF WITNESS BRIAN K. INGRAM SWORN

13 MR. MORTARA: Your Honor, this is a demonstrative we
14 use at some point. Trying to get it ready.

15 JUDGE COLLYER: All right.

16 MR. MORTARA: May I proceed?

17 THE COURT: Yes, please go right ahead.

18 DIRECT EXAMINATION

19 BY MR. MORTARA:

20 Q. Good morning, Mr. Ingram. Could you introduce yourself to
21 the Court?

22 A. My name is Brian Keith Ingram.

23 Q. What is your current occupation?

24 JUDGE COLLYER: Wait one second.

25 How do you spell your first name, sir?

1 THE WITNESS: B-R-I-A-N.

2 JUDGE COLLYER: Thank you, sir.

3 BY MR. MORTARA:

4 Q. What is your current occupation?

5 A. I'm the director of the Elections Division of the Texas
6 Secretary of State's office.

7 Q. How long have you been director of the Elections Division?

8 A. Just over six months.

9 Q. I'd like to start talking about the existing voter
10 registration system in Texas.

11 How does one register to vote?

12 A. There is a short post card application that has to be
13 filled out and returned to the Voter Registrar. Some portion
14 of it will come to our office and we forward them to the Voter
15 Registrar of the applicable county.

16 Q. Would you characterize it as easy to register?

17 A. Yes, it is.

18 Q. Does federal law have any bearing on how easy it is to
19 vote?

20 A. It does indeed. The NVRA required that the application
21 process be easy as well as available at the time you apply for
22 a driver's license or any other Government benefits.

23 Q. What information does a prospective voter need to provide
24 to register to vote in Texas?

25 A. Well, they need to say whether or not they are a citizen.

1 They need to affirm that they are going to be over the age of
2 18 at the time the election occurs.

3 They need to provide their full name, date of birth. They
4 are given the option of providing a Texas ID or driver's
5 license number or if they don't, to provide the last four of
6 the social security number and then they are required to give
7 both the residence address, and if they don't receive mail at
8 the residence address they are required to describe its
9 location and provide a mailing address.

10 Q. I'm going to show you what's been marked as Plaintiff's
11 Exhibit 62. Plaintiff's Exhibit 62 is no longer on the screen.

12 MR. MORTARA: Please excuse me, Your Honor.

13 (Pause.)

14 JUDGE WILKINS: While you're getting that ready,
15 Mr. Ingram, why don't you just tell us what you meant by MVRA.

16 THE WITNESS: The National Voting Rights Act that was
17 passed in 1993 also known as the Motor Voter Law.

18 JUDGE WILKINS: Thank you.

19 MR. MORTARA: Thank you, Your Honor.

20 BY MR. MORTARA:

21 Q. And Mr. Ingram, Plaintiff's Exhibit 62 is now on the
22 screen.

23 What is Plaintiff's Exhibit 62?

24 A. That is a blank Texas voter registration application.

25 Q. Does Exhibit 62 reflect what information someone needs to

1 provide in order to register to vote?

2 A. It does indeed.

3 Q. Does the State have a central database for voter
4 registration records?

5 A. Yes, we do. We've got the Texas Election Administration
6 Management system, it's also known as TEAM.

7 Q. Does federal law have any impact on TEAM?

8 A. Yes. The Help America Vote Act required that the state
9 implement a statewide voter registration computer database.

10 Q. What information is kept in TEAM?

11 A. In TEAM we'll keep basically the information related to
12 each voter. We keep all of the information that they provide
13 in the voter registration application as well as any changes in
14 status and any history of voting that the counties provide
15 regarding that voter.

16 Q. I want to ask you about the state of the voter rolls in
17 Texas now. How many entries do you have on the voter
18 registration database right now?

19 A. As of last Thursday the number was 13,196,388 voters
20 registered in Texas.

21 Q. Are there names in that voter registration database in
22 Texas of people who are ineligible to vote?

23 A. Yes, there are.

24 Q. Has Texas done any studies on the issue of ineligible
25 voters in the State of Texas?

1 A. Yes. There was a state auditor's report that was done
2 back in 2007.

3 Q. Did you review the 2007 state auditor report in connection
4 with your duties as head of elections?

5 A. I did.

6 Q. What were the findings of the state auditor report of the
7 voter rolls in Texas in 2007?

8 A. The state auditor found that there were approximately
9 23,000 deceased persons on the voter rolls and that there were
10 approximately 26,000 convicted felons on the voter rolls.

11 Q. Did the auditor undercover any evidence that these people
12 had voted?

13 MS. WESTFALL: Objection.

14 He has no personal knowledge. He has been employed with
15 the division for six months. This auditor report was drafted
16 in 2007.

17 MR. MORTARA: Your Honor, he reviewed the report as
18 part of his duties.

19 JUDGE COLLYER: I'm going to allow the testimony in.
20 It's an official report.

21 You can go ahead, sir.

22 MR. MORTARA: I think the Justice Department will be
23 happy with the answer.

24 BY MR. MORTARA:

25 Q. Did the auditor uncover any evidence that the people had

1 voted?

2 A. No, it did not.

3 Q. Why not?

4 A. There were two reasons for that. Number one, the only
5 elections voting history that they looked at was the May
6 constitutional amendment election that had a 7 percent turn
7 out.

8 And the other reason was that we didn't have statewide
9 voting history at the time.

10 Q. When you say at the time. Do you now have statewide voter
11 history in TEAM?

12 A. Yes, we do as of this last election.

13 JUDGE COLLYER: So does that mean as of 2007 there
14 was no statewide voter data?

15 THE WITNESS: What it means is that counties can
16 provide the voting history information to the TEAM system on a
17 voluntary basis. Some counties did, some counties did not.

18 JUDGE COLLYER: Which means you didn't have it?

19 THE WITNESS: For statewide that is right.

20 JUDGE COLLYER: The reasons that you gave were your
21 guestimates as to why there's no evidence that these people
22 voted.

23 Guestimates are not admissible, Mr. Mortara.

24 THE WITNESS: Well, it was the auditor's finding
25 actually.

1 JUDGE COLLYER: Well then, that's a different issue
2 isn't it?

3 Thank you. Go ahead.

4 Mr. Mortara, you understand the difference?

5 MR. MORTARA: I do, Your Honor.

6 JUDGE COLLYER: Thank you.

7 MR. MORTARA: And the reason the testimony was
8 inadmissible is because it is the content of the report.

9 JUDGE COLLYER: Mr. Mortara, just make it clear in
10 your questions and answers.

11 MR. MORTARA: I will endeavor to do so, Your Honor.

12 JUDGE COLLYER: Thank you, sir.

13 BY MR. MORTARA:

14 Q. You mentioned voting data from recent elections.

15 What election are you referring to?

16 A. The May 29th primary that we had as well as some data from
17 the May 12th voting.

18 Q. When did the May 29th election data get loaded into TEAM?

19 A. The June 28th was the deadline. They had to do it 30 days
20 after the election.

21 Q. Now, I want to talk about efforts to keep the voter rolls
22 clean. Do you make efforts to purge the voting rolls of dead
23 people?

24 A. Certainly.

25 Q. Can you describe how the Secretary of State goes about to

1 purge the voter rolls of the dead?

2 A. It's a several layer process. The initial piece of it is
3 that at the county level between the County Health Department
4 and the County Registrar. The County Health Department
5 notifies the local Voting Registrar of any persons who died in
6 the county and the Voter Registrar checks to see whether or not
7 they are a registered voter.

8 In addition, that local data is collected by the state at
9 the Bureau of Vital Statistics and that report is compiled of
10 persons who have died, and that report is given to the
11 Secretary of State's office every week to ten days we get a new
12 batch of information.

13 Q. What happens when you find a registered voter that you are
14 pretty sure has died at the Secretary of State?

15 A. Strong match deceased persons are cancelled in TEAM for
16 online counties and a task is sent to the offline counties for
17 them to cancel the voter.

18 Q. I'm sure the Court would like to know the lingo here.

19 What is an online county and an offline county?

20 A. In Texas we've got --

21 JUDGE COLLYER: You're kidding.

22 Go right ahead, sir. Please answer the question.

23 THE WITNESS: In Texas we've got 214 counties that
24 manage their voter registration rolls directly on the TEAM
25 system. We call those online counties.

1 We have about 40 counties who manage their own voter
2 registration data and sink it with the statewide system.

3 BY MR. MORTARA:

4 Q. And what's the distribution of voters? Sounds like most
5 counties are online?

6 A. Most counties are online but most voters are in the
7 offline counties. About 10 of the 13 million voters are
8 contained within the 40 offline counties.

9 Q. Do all of the offline counties follow the Secretary of
10 State's instruction to purge dead from the voter rolls?

11 A. No, they do not.

12 Q. Do you have any examples of an offline county that has
13 failed to do so?

14 A. Yes. We recently discovered that Travis County had failed
15 to cancel any of the strong match deceased voter tasks that we
16 had sent them since the implementation of TEAM in 2007.

17 Q. Where is Travis County for the Court?

18 A. Travis County is the State Capital of Austin, it contains
19 the state capital.

20 Q. Does federal law in any way effect your ability to keep
21 the voter rolls accurate?

22 A. Yes, it does. It does it in two ways. Federal law
23 requires it to be easy to register to vote. And federal law
24 makes it more difficult to purge voters who have moved.

25 Q. Does the ease of registration and how does that pose a

1 problem for keeping the voter rolls clean?

2 A. Well, anyone can fill out the post card application and
3 send it in at any time. So it is just a really easy process.

4 Q. Do you have any county level registration data that
5 illustrates the inflated nature of Texas' voter rolls?

6 A. Indeed we do, yes.

7 Q. Did you help us to prepare a map demonstrative to
8 demonstrate this?

9 A. I did.

10 MR. MORTARA: Your Honor, I'm going to publicize
11 Plaintiff's Exhibit 100. It's a demonstrative only, it's based
12 on data that is in Plaintiff's Exhibit 8.

13 THE COURT: Okay.

14 BY MR. MORTARA:

15 Q. Mr. Ingram, could you describe what is shown here on the
16 map detail for the Court?

17 A. Certainly. This is a map of the State of Texas and it has
18 counties shaded in different colors. And the colors represent
19 the percentage of either the voting age population for counties
20 under 65,000 in population or the citizen voting age population
21 for counties over 65,000.

22 The darkest pink or light purple are counties that have an
23 actual registration exceeding a hundred percent of the people
24 in that county who are old enough to vote. The lighter pink
25 represents counties that have between 90 and 99.9 percent of

1 the voting age population registered to vote.

2 Q. And how many counties have over a hundred percent
3 registration rates?

4 A. We've got 18 counties.

5 Q. How many counties have over 90 percent registration rates?

6 A. Including the 18 over a hundred percent, we have got 54
7 counties that are over 90.

8 Q. And Mr. Ingram, what is the statewide registration rate in
9 Texas?

10 A. Currently it's about 73 percent.

11 Q. Do you find it realistic that a county would have a
12 registration rate over 90 percent?

13 A. I do not.

14 Q. What is the explanation for these very high registration
15 rates?

16 A. I think the primary explanation is the requirement that
17 the person who moves stay on the voter registration roll for
18 the next two general elections.

19 Q. I want to go back to the voter registration application
20 unless the Court has questions about the map?

21 THE COURT: No, I don't.

22 Do you?

23 JUDGE WILKINS: No.

24 BY MR. MORTARA:

25 Q. We still have Plaintiff's Exhibit 62, the voter

1 registration application and I'm going to refer you to number 8
2 down here which requires the showing of a Texas ID number or
3 social security number.

4 Does everybody provide this information?

5 A. They do not. Hundreds of thousand do not.

6 Q. Do you have any reason to believe that those hundreds of
7 thousands are being inaccurate when they fail to provide this
8 information?

9 A. Yes, it is inconceivable that that many people do not have
10 either one of these forms of identification.

11 Q. What, can you explain a little bit further what you mean
12 as it pertains for instance to social security numbers?

13 A. Well, you know, for the last 20 something years social
14 security numbers have been assigned virtually at birth. You
15 cannot file a tax return, you cannot claim someone as a
16 dependent if they do not have a social security number.

17 Q. So some voters register to vote and just don't provide
18 this information. Why do you register then if you are pretty
19 sure that they're not providing full information as they are
20 required?

21 A. The federal law requires that we register voters even if
22 they do not provide this info.

23 Q. Mr. Ingram, do you have foreign nationals registered to
24 vote in Texas?

25 A. Yes, we do.

1 Q. How do you know, what evidence are you personally aware of
2 that Texas has foreign nationals registered to vote?

3 A. Since September 1st of 2011, 394 persons have been
4 cancelled from the voter rolls for non citizenship.

5 Q. Under what process did you discover that 300 -- what did
6 you say 90?

7 A. Three hundred ninety-four.

8 Q. Under what process did you discover that that many people
9 had been cancelled from the voter rolls since September 1st,
10 2011?

11 A. There was a law passed by the legislature session, House
12 Bill 174 that required county jury clerks to provide to the
13 state a list of persons who opt out of jury service on the
14 basis that they are not a citizen. That information had
15 previously been provided to the counties only.

16 Q. What happens after somebody shows up for jury duty and
17 says I'm not a citizen of the United States?

18 A. That person is reported to the Voter Registrar either from
19 us or from the local jury clerk. And they are sent a letter, a
20 notice of examination letter informing them that they have
21 been, that the Voter Registrar has been told that they claimed
22 they were not a citizen for purposes of jury duty and asking
23 them to confirm their citizenship within 30 days or be
24 cancelled from the rolls.

25 Q. That 394 number, is that the number of people who got sent

1 a letter or the number of people that were cancelled because
2 they didn't respond?

3 A. That was the number that was cancelled.

4 Q. Are there people on Texas' voter rolls who are U.S.
5 citizens but no longer citizens of Texas because they no longer
6 live in Texas?

7 A. Yes.

8 Q. Do you have a process for identifying those people?

9 A. Yes, we do.

10 Q. What's it called?

11 A. It's the mass mail out process.

12 Q. Can you describe for the Court the mass mail out process?

13 A. Certainly. In December of odd numbered years, every
14 registered voter receives a new voter registration card with a
15 different color than the previous biennium. This is non
16 forwardable piece of mail. Some portion of them are returned
17 to the Voter Registrars because they were undeliverable, the
18 person had moved.

19 The Voter Registrars then send a notice of examination
20 letter to the registered voter and that is a forwardable piece
21 of mail asking them to confirm their address information.

22 Q. And how many people respond to the forwarded piece of mail
23 and say oh, I just moved, here I am?

24 A. About 75 percent. The majority of folks respond within
25 the first 30 days with updated address information, their voter

1 registration is updated and they are good to go, active voters.

2 Q. Is there a name for the voters who have not had their
3 voter cards returned to Secretary or to the County Registrar?

4 A. Yes. Those voters are called suspense voters. Their
5 voter registration is in suspense.

6 Q. Is there a differentiation in your mind between the 75
7 percent who immediately come back and say I've moved and the 25
8 percent who stay on the list?

9 A. Yes, there is a difference. The 25 percent who stay on
10 the list we, you know, think of as long term suspense.

11 Q. Mr. Ingram, I know you provided us with your voter
12 identification card. I would like to show it to the Court.
13 It's Plaintiff's Exhibit 104.

14 With your permission, sir, I'll publicize your voter
15 information card?

16 A. Certainly.

17 Q. Just so that the Court can see what one looks like, can
18 you describe the voter registration card to the Court?

19 A. Right. This is the card that every voter gets at the end
20 of an odd number year. It's got the voter unique
21 identification number, the year of birth, the precinct, and the
22 date that it will be valid for.

23 Q. Now Mr. Ingram, this is your card. Are you on the long
24 term suspense list?

25 A. As a matter of fact I am.

1 Q. Can you explain how that happened?

2 A. Well, I went to Arkansas to practice law briefly and when
3 I came back I lived in Austin for awhile and registered to vote
4 in Travis County.

5 Then I moved to Williamson County and registered to vote
6 there and for some reason, my Travis County registration was
7 not cancelled and I am actually a suspense voter in Travis
8 County.

9 Q. Do you have any --

10 JUDGE COLLYER: Are you also a voter in William
11 County?

12 THE WITNESS: I am an active voter in Williamson
13 County, yes, ma'am.

14 BY MR. MORTARA:

15 Q. Would it be hard for you to vote twice if you wanted to?

16 A. It wouldn't be hard, no.

17 Q. Do you have information on how likely someone is who is on
18 the suspense list to vote?

19 A. If they are on the longer suspense list they are unlikely
20 to vote.

21 Q. Do you have information from recent elections on that?

22 A. Yes, as a matter of fact we do.

23 Q. Can you tell the Court what that information is?

24 A. Yes. In this recent May election we had just over one
25 percent of suspense voters vote.

1 Q. What percent of non suspense voters voted?

2 A. Just over 17 percent.

3 Q. Mr. Ingram, is there anything special about the character
4 of the suspense list for the databases that you produced in
5 this case on April 2012 for purposes of this litigation?

6 A. Yes. The mass mail out was significantly delayed this
7 year because of the redistricting litigation, and so the Court
8 in San Antonio gave a deadline of April the 24th for counties
9 to mail their voter registration cards.

10 Q. Does that have an effect on the composition of the
11 suspense list?

12 A. It does. What it means is that most of the people in the
13 May primary on the official list of registered voters as of
14 April the 30th were the longer term suspense voters.

15 Q. Why is turn out lower for registrants on the long term
16 suspense list in the experience of the Texas Secretary of State
17 Elections Division?

18 A. Well, they have either moved counties within Texas and
19 sort of dropped out of the process, didn't register to vote or
20 they have moved out of state.

21 Q. Does everyone who moves out of the state or for instance
22 die end up on the suspense list?

23 A. No.

24 Q. Can you give me a few examples of how you wouldn't end up
25 on the suspense list if you moved out of the state or died?

1 A. Well, two that I can think of are if you've got an adult
2 child who has finished college and moved out of the state to
3 take a job, their voter registration card may still go to their
4 parents' house and it wouldn't be returned as undeliverable.

5 Another situation is where you've got a family member who
6 continues to reside at a residence after a registered voter
7 passes away. That family member will continue to get the voter
8 registration card.

9 Q. Mr. Ingram, if I get ahold of your card can I vote?

10 A. Sure.

11 Q. How would that happen?

12 A. You take my card to Precinct 147 and vote.

13 Q. Can you describe for the Court how Texas' current voter ID
14 law works?

15 A. Currently we have a version of the first time voter
16 process under HAVA. Our version of the process was precleared
17 back in 2007 by the Justice Department.

18 What it does is if someone doesn't provide either a
19 driver's license number or a social security number or if the
20 information that they provide doesn't match our inhouse
21 database, they are flagged as an ID voter and so they will have
22 to present an additional form of identification when they show
23 up to vote.

24 Q. Can you go through with the Court some of the examples of
25 the types of ID and no ID voter can provide under current law?

1 A. Sure. The list includes under current Election Code
2 63.0101. It includes both photo identification such as
3 driver's license, student ID, military ID and it also includes
4 non photo forms of identification such as utility bill, pay
5 stub, bank statement, as well as Government correspondence.

6 Q. Government correspondence, would that necessarily include
7 the letter that the person got saying they needed to provide
8 ID?

9 A. That would in fact be Government correspondence, yes.

10 Q. We talked about how if I stole your card I can vote fairly
11 easily.

12 Do you have any problems currently with missing cards?

13 A. Yes, we've got a situation in Fort Bend County that we are
14 currently investigating where a large number of voter
15 registration cards have gone missing.

16 Q. What number have gone missing?

17 A. It's hard to say. There are two zip codes that are
18 effected and there are 44,000 some odd voters in those two zip
19 codes. Some portion of them have received their VR cards and
20 some have not. The best estimate from the local election
21 officials is that we've got about 18,000, 19,000 cards missing.

22 Q. Mr. Ingram, in the last election that just happened in May
23 were there any reports that the Secretary of State received
24 about individuals using other people's cards?

25 A. Yes. We received a report from Hidalgo County that a man

1 was showing up at the polling place with different registration
2 cards and voting more than once.

3 Q. What did you do in response to that report?

4 A. We advised the local election officials to detain the
5 person and to call the police if he showed up again.

6 Q. Mr. Ingram, can even low levels of fraudulent voting swing
7 the result of an election?

8 A. Certainly.

9 Q. Can you give me some examples of elections that could have
10 been swung? Not asking you to say that they were swung by
11 fraud. I'm saying what types of elections could be swung by
12 fraud?

13 A. Generally lower turn out elections such as municipal
14 elections have much closer vote margins. We had a recent in
15 the May 12th local elections we had a tie vote in the city
16 council race up in north Texas and that race was eventually
17 decided by a coin flip.

18 We also had a race for Junior College Board of Directors
19 over in Texarkana. That was a four vote margin after election
20 day. On a recount it was a tie and neither one -- well, I
21 don't know if neither one, but both of them would not agree to
22 decide it by a coin toss so that one is actually going to be
23 new election.

24 Q. Without disrespect to the Junior College in Texarkana, are
25 you even in somewhat more important elections sometimes decided

1 by very close margins?

2 A. Yes, indeed we had a state house race a couple of years
3 ago, Dan Neal and Donna Howard in Travis County that was
4 decided by a 30 some odd vote margin.

5 JUDGE COLLYER: Do the contestants in the Junior
6 College Board of Directors in Texarkana have to pay the cost of
7 the re-election?

8 THE WITNESS: No.

9 BY MR. MORTARA:

10 Q. Mr. Ingram, based on the voter data information you got
11 just from this May election, that you say you loaded into TEAM
12 on June 28th, do you have any evidence of deceased voters
13 having their cards used?

14 A. Yes.

15 Q. What is that evidence?

16 A. We learned that there was a list of 50,000 voters that
17 were registered with active voter unique identification numbers
18 and I asked for a copy of that list so that we could check
19 those against the voting history that we received on June 28th.

20 Q. What is your understanding where that 50,000, who
21 discovered it?

22 A. It's my understanding that this was information provided
23 by the Department of Justice.

24 Q. What number did you say were people that you think may
25 have voted who were dead?

1 A. We believe 239 folks voted in the recent election after
2 passing away.

3 Q. How many of those were votes in person?

4 A. Two hundred and thirteen.

5 Q. Have you done anything beyond that to confirm whether
6 there are in fact deceased individuals who voted in the May
7 elections?

8 A. Well, this was of course a surprising and troubling result
9 so we took the best matches, the ones that had full nine social
10 security number in both databases, and we asked the Department
11 of Vital Statistics to provide us with actual death
12 certificates for as many of those as we could round up in a
13 short time and we received ten death certificates.

14 Q. Of the ten death certificates you received how many of
15 them do you think may have been dead people who voted in the
16 May elections?

17 A. Four.

18 Q. And what led you to conclude from review of the death
19 certificates that those four people had voted?

20 A. Their social security numbers matched, the names matched,
21 the date of births matched and they pre deceased before, they
22 pre deceased before the election. One March of 2012, the rest
23 of them from 2004, 2006, 2009.

24 Q. It seems like an obvious question, but how could someone
25 who died in 2004 vote in 2013?

1 A. They still have a voter registration card coming to their
2 address.

3 Q. Who is voting?

4 A. I don't know.

5 Q. Has Secretary of State ever done an investigation like the
6 one you just described before?

7 A. No.

8 Q. Why not?

9 A. We've never had these two pieces of information at the
10 same time.

11 Q. What pieces are you referring to?

12 A. A list of active registered voters who are deceased and a
13 statewide voting history to compare it to.

14 Q. Does the investigation you performed on the May voting
15 data tell you anything about the prevalence of in person voter
16 fraud of this type?

17 A. It tells us that it's more common than we thought and that
18 it's troubling.

19 Q. Would Senate Bill 14 have prevented this potential fraud
20 you have uncovered?

21 A. Yes, I believe it would.

22 Q. I want to turn now to Senate Bill 14.

23 How it will be implemented if Texas finally gets
24 preclearance.

25 First, there's been a suggestion from some of the experts

1 in this case that a person will not be able to vote unless
2 their photo ID name matches exactly to the name on the voter
3 registration rolls; is that correct?

4 A. That is not right. The standard is substantially similar.

5 Q. Have you given guidance to election clerks on how to
6 decide whether two names are substantially similar?

7 A. Yes, we have. We have posted the rule, it's Texas
8 Administrative Code 81.71.

9 Q. I would like to publicize that to the Court. It's part of
10 Plaintiff's Exhibit 76.

11 Plaintiff's Exhibit 76 for the Court's benefit is Texas'
12 preclearance submission for this rule.

13 Mr. Ingram, just tell the Court whether this rule has been
14 precleared?

15 A. It has not.

16 Q. Why not?

17 A. Because it's tied up with the preclearance SB 14. So it's
18 pending.

19 Q. Moving from the regulation of the Texas Administration
20 Code here, could you please describe to the Court what the
21 guidance is to election clerks about similar names?

22 A. Well, we've first gave the clerks a general feel if it's
23 slightly different in their judgment, then it's substantially
24 similar and the voter will be able to vote.

25 If it's a customary nickname Jim for James, Bob for Robert,

1 Berto for Alberto, then the person will have a substantial
2 similar name will be allowed to vote.

3 If it contains an initial, different middle name, former
4 name, that will be substantially similar and they'll be allowed
5 to vote.

6 Q. Mr. Ingram, are election clerks going to sit there and
7 look up whether somebody has got a suspended license or some
8 other status with DPS? What are they going to look at on the
9 license when they decide to let somebody to vote?

10 MS. WESTFALL: Objection, speculation.

11 MR. MORTARA: I'll rephrase the question, Your Honor.

12 JUDGE COLLYER: Thank you.

13 BY MR. MORTARA:

14 Q. Mr. Ingram, what is your guidance to election clerks on
15 what they are suppose to do under Senate Bill 14 when someone
16 shows up with their driver's license and presents it to vote?

17 A. Check the names.

18 Q. Anything else?

19 A. No.

20 MR. MORTARA: I want to talk a little bit now about
21 the preclearance process and I understand the Justice
22 Department has an objection.

23 MS. WESTFALL: Yes, Your Honor.

24 To the extent that the questions will get into the
25 deliberative process of the Justice Department we object.

1 This is de novo review. The Court has already ruled in
2 response to our motion for protective order on the request for
3 admission that the preclearance process is not an issue in this
4 litigation. We have a standing objection to questions related
5 to the preclearance process.

6 JUDGE COLLYER: All right. What is the, why don't
7 you give me a short proffer as to the nature of the evidence
8 that you would want to elicit.

9 MR. MORTARA: Very briefly, Your Honor. Mr. Ingram
10 will testify that the State of Texas was asked to perform a
11 database match, that that database match resulted in 795,000
12 people being on a list.

13 That the State of Texas told the Justice Department that
14 the list was not reliable for various reasons associated with
15 matching and that the Justice Department subsequently denied
16 preclearance on the basis in part of its analysis of that
17 795,000 list and that's all of the testimony.

18 JUDGE COLLYER: Well, I'm not sure that the last
19 statement is relevant, but certainly what was submitted and the
20 problems of database matching are perfectly legitimate and need
21 to be presented in this record, so why don't you proceed.

22 MR. MORTARA: Thank you, Your Honor.

23 BY MR. MORTARA:

24 Q. When did you become involved with preclearance?

25 A. January 5th, 2012.

1 Q. When you assumed your duties did you make yourself
2 familiar with the course of correspondence with the DOJ on
3 preclearance?

4 A. I did.

5 Q. And briefly as the Court has suggested, what happened
6 after you became responsible for preclearance?

7 A. I, the process that we were engaged in at the time I
8 started this job was assembling data requested by the DOJ
9 supplemental information for the SB 14 clearance.

10 Q. Was that supplemental information in the form of a
11 database match?

12 A. It was. We had been asked by the Justice Department to
13 match a DPS database that we didn't normally use with the voter
14 registration rolls in an effort to determine the race ethnicity
15 of registered voters with driver's license.

16 Q. And what was the result of that database effort?

17 A. As a result of that database effort, we could not match,
18 could not prove that 795,000 registered voters had an ID.

19 Q. Did you have any concerns with the quality of that list?

20 A. Yes, indeed.

21 Q. Did you express those concerns to the Department of
22 Justice?

23 A. I did.

24 Q. Where did you express those concerns?

25 A. In a letter accompanying the data.

1 JUDGE COLLYER: Wait, wait. I mean, we know that
2 part, that's already before us.

3 The question is what's, why couldn't they prove the
4 795,000? I mean, we have your proposed findings of fact and
5 stuff. This is all in that.

6 MR. MORTARA: The only thing I want to do for the
7 record is identify the letter as Plaintiff's Exhibit 82 and I
8 will move on.

9 JUDGE COLLYER: Great. Go ahead.

10 BY MR. MORTARA:

11 Q. Mr. Ingram, do you have an understanding of the subsequent
12 analysis the Justice Department has performed in this case?

13 A. I do. I understand that they've got a list of 1.9 million
14 voters that they claim do not have an ID or driver's license.

15 Q. And did you have a chance to inspect this list of 1.9
16 million potentially effected voters yourself?

17 A. Well, I asked if I was on it.

18 Q. What did you discover?

19 A. That I am.

20 MR. MORTARA: Your Honor, I am going to show you a
21 portion of the Justice Department's 1.9 million list that their
22 expert produced to us for the sole purpose of demonstrating
23 what Mr. Ingram saw when he asked to see his name on the list.

24 MS. WESTFALL: Objection. It is in authenticated.

25 MR. MORTARA: Your Honor, I told the Justice

1 Department I was going to do this last night. They have had
2 plenty of time to determine that Mr. Ingram is in fact on their
3 list.

4 JUDGE COLLYER: Mr. Ingram has already testified to
5 that fact and if his testimony is incorrect, I'm sure that the
6 Department of Justice will cross examine him on it, but
7 otherwise, I don't know that we need to see it. But if that's
8 what you want to do, go right ahead.

9 MR. MORTARA: Your Honor, there's one interesting
10 thing about it.

11 JUDGE COLLYER: Go right ahead.

12 MR. MORTARA: And so for the Court's benefit, this a
13 database software program. It allows me to search the list of
14 names that the Justice Department's expert provided me.

15 And I'm just selecting some fields so that we can
16 establish Mr. Ingram is on the list, I'm going to get his
17 street number and street name as well as well as his city. And
18 I think that's about all we need although for the DOJ's benefit
19 there are some fields that inform the DOJ a little bit more
20 about whether he was a matched voter or not.

21 And then I know it's very small, Your Honor, I'll make
22 it bigger. I just type in some computer code that I just
23 learned how to do over the weekend. So I'm a little weak here.

24 BY MR. MORTARA:

25 Q. Your first name, sir, is actually Brian, right?

1 A. It is.

2 Q. And your last name is Ingram?

3 And it all looks very complicated, but at the end of the
4 day it's kind of like typing a search into Google. I hit run
5 then you see Mr. Ingram's name pop up on the bottom. The
6 interesting thing, Your Honor, not to take argument time with
7 the witness is that he's on there twice.

8 Mr. Ingram, is this what you saw when you asked to see your
9 name whether your name is on the DOJ list?

10 A. It is.

11 Q. Why are you here twice?

12 A. Well, it is showing that my old address in Travis County
13 as well as my current address in Williamson County, the voter
14 status has me as a suspended voter. As to why I'm on the list
15 twice I have no idea.

16 Q. Mr. Ingram, do you have a driver's's license?

17 A. I do.

18 Q. Could you take it out and show it to the Court?

19 A. Certainly.

20 Q. And for identification purposes, we have marked a redacted
21 version of Mr. Ingram's driver's license as Plaintiff's
22 Exhibits 104 -- 105 -- excuse me. I don't think I need to
23 publicize it but it is a redacted version of Mr. Ingram's
24 license.

25 Mr. Ingram, did you have a chance to check for anybody else

1 on the DOJ's list of effected voters?

2 A. Well, I was curious to see whether my wife would be on
3 here.

4 Q. What is her name?

5 A. Julia Dawn Ingram.

6 Q. I'm searching now for Julia Ingram in the DOJ list. There
7 are actually three. Is your wife on the list?

8 A. She is twice.

9 Q. Why do you think she's on the list twice?

10 A. I do not know.

11 Q. Mr. Ingram, does your wife have a driver's license?

12 A. She does.

13 Q. Is it current and valid?

14 A. It is.

15 MR. MORTARA: No more questions.

16 JUDGE COLLYER: All right. Does the United States
17 wish to cross-examine the witness?

18 MS. WESTFALL: Yes, we do, Your Honor.

19 THE COURT: All right.

20 JUDGE COLLYER: Ms. Westfall, let me ask you
21 respectfully without meaning anything except for it's time for
22 a break, how long will your cross take do you think?

23 MS. WESTFALL: I anticipate the cross will take
24 between 35 to 45 minutes.

25 JUDGE COLLYER: Then it is time to take a break.

1 Yeah.

2 All right, we're going to take a 15 minute break. And
3 we'll be back at 15 minutes from now.

4 Thank you, sir.

5 (Witness excused.)

6 (Recess at 10:35 a.m.)

7 (Proceedings resumed at 10:55 a.m.)

8 JUDGE COLLYER: I have to say that many of the
9 counsel here were in the Texas redistricting trial, and it's
10 like see old friends.

11 I've been thinking a lot about you, I promise. As
12 have -- as have other people. I promise.

13 All right. Ms. Westfield -- Westfall, sorry.

14 MS. WESTFALL: Thank you, Your Honor.

15 **CROSS EXAMINATION**

16 BY MS. WESTFALL:

17 Q. Good morning, Mr. Ingram.

18 A. Good morning.

19 Q. You currently serve as the Director of the Elections
20 Division for the State of Texas; is that correct?

21 A. That is, yes, ma'am.

22 Q. And you started serving in that position on January 5th,
23 2012; is that correct?

24 A. I did.

25 Q. Prior to becoming Director of the Elections Division, you

1 had virtually no experience in election law; is that right?

2 A. That's true, yes.

3 Q. You've never been in a polling location to observe an
4 election; is that correct?

5 A. That is correct.

6 Q. Mr. Ingram, you were involved in the development of SB 14;
7 is that correct?

8 A. That is true.

9 Q. You gave no input on Senate Bill 14; is that right?

10 A. I did not.

11 Q. You did not craft the language of SB 14; is that correct?

12 A. No, ma'am.

13 Q. You didn't vote on Senate Bill 14; is that correct?

14 A. I did not.

15 Q. You had no role whatsoever in the passage of Senate Bill
16 14; is that right?

17 A. I didn't.

18 Q. And you had no communications with anyone about Senate
19 Bill 14 while the legislature was considering SB 14; is that
20 correct?

21 A. That's true.

22 Q. In fact, you were not involved in any previous voter ID
23 bills considered by the Texas legislature; is that correct?

24 A. That is correct.

25 Q. And today you've never worked with the legislature in

1 development of any legislation; is that right?

2 A. That is not true.

3 Q. You've held your position since January of this year; is
4 that correct?

5 A. That's true.

6 Q. And you -- the legislature has -- you have not worked with
7 the legislature because they have not been in session this
8 year; is that correct?

9 A. Right, but I worked with them in my previous job.

10 Q. Your immediate supervisor at the Elections Divisions was
11 Ann McGeehan; is that correct?

12 A. That's correct.

13 Q. Mrs. McGeehan served as the Director of the Elections
14 Division; is that correct?

15 A. She did.

16 Q. Do you know how long she served as the Director of
17 Elections?

18 A. I don't know how long she was the director, I think she
19 was in the division since '89 maybe.

20 Q. It was Ms. McGeehan who testified as a resource witness
21 before the Texas State Legislature about SB 14; is that
22 correct?

23 A. Yes, ma'am.

24 Q. And it was Ms. McGeehan who testified as a resource
25 witness before the Texas State Legislature about photo ID bills

1 considered previous to Senate Bill 14; isn't that correct?

2 A. Yes.

3 Q. I believed you testified in your direct that there were
4 some voters who had responded to a notice for jury duty who
5 indicated that they were not U.S. citizens, and they were on
6 the voter roles; is that right?

7 A. Yes.

8 Q. And isn't it true that some people claimed that they are
9 not U.S. citizens in order to avoid jury duty?

10 A. I don't know for sure about that, but I would imagine so.

11 Q. And I believe you testified earlier that there were some
12 potential dead people who had voted in recent elections; is
13 that correct?

14 A. That's true.

15 Q. And were any of those referred to the Special
16 Investigation Unit of the Office of the Attorney General for
17 prosecution?

18 A. Not yet, but they will be very soon.

19 Q. And isn't it true that under current law it's not very
20 difficult for voters to prove their identity at the polls on
21 election day?

22 A. I agree with that.

23 Q. A person who wants to submit to register to vote submits
24 an application; isn't that right?

25 A. Yes, ma'am.

1 Q. An applicant must sign the application under penalty of
2 perjury; is that right?

3 A. Yes.

4 Q. And must affirm that he is a U.S. citizen and doesn't have
5 a felony conviction and has not been adjudicated mentally
6 incapacitated; is that correct?

7 A. I believe so.

8 Q. And isn't it true that when an applicant submits a voter
9 registration application, the registrar doesn't charge the
10 applicants a processing fee?

11 A. That's true.

12 Q. And under state law, the registrar, the county registrar
13 determines whether an applicant is eligible; is that right?

14 A. Yes.

15 Q. And if the voter registration application is approved that
16 the registrar mails the applicant a voter registration
17 certificate; is that correct?

18 A. Yes.

19 Q. And isn't it true that county registers don't charge voter
20 applicants for a voter registration certificate?

21 A. That's true.

22 Q. A voter registration certificate lists a voter's name and
23 residential address and date of birth; right?

24 A. No, it just contains the year of the birth.

25 Q. It contains a residential address; does it not?

1 A. It does.

2 Q. And it contains the voter's name and -- name; correct?

3 A. It does.

4 Q. The certificate also indicates that it's a felony for a
5 person other than the voter to vote with the certificate; isn't
6 that right?

7 A. I don't know.

8 Q. And upon receiving the certificate, the voter must sign
9 it; isn't that right?

10 A. That's true.

11 Q. And under current law, I believe you testified that voters
12 who vote in person at the polls can present a variety of forms
13 of ID, both photo and non-photo to prove their identity; is
14 that right?

15 A. That's right.

16 Q. And it includes a voter registration certificate; is that
17 correct?

18 A. It does; however, if someone is flagged on the ID list,
19 then they will have to show an additional form of
20 identification on the list.

21 Q. And that would be a form of identification required by the
22 Help America Vote Act; is that correct?

23 A. I don't know, I know 630101.

24 Q. And the forms of acceptable ID also include an expired
25 driver's license or ID issued by the state; is that correct?

1 A. Currently, yes, ma'am.

2 Q. And it also includes a utility bill; right?

3 A. That's right.

4 Q. And a bank statement; correct?

5 A. Yes.

6 Q. And a paycheck; correct?

7 A. That's right.

8 Q. And has this, the current rule in terms of voter ID at the
9 polls, has that been in effect for many years in Texas?

10 A. It has.

11 Q. Has it been in effect for about -- for over a decade?

12 A. I don't know if it's over a decade, but it's been a good
13 long while.

14 Q. And you're familiar with the Help America Vote Act; right?

15 A. I am.

16 Q. And it requires, I believe you testified earlier, states
17 to implement statewide voter registration lists; is that right?

18 A. That's right.

19 Q. And the database must be uniform, official, centralized
20 and interactive; is that right?

21 A. Right.

22 Q. And you testified earlier that, indeed, Texas has such a
23 database, and it's called TEAM; is that correct?

24 A. Yes, ma'am.

25 Q. And it must be maintained and administered at the state

1 level; is that right?

2 A. Right.

3 Q. And the database must contain the name and registration
4 information of every registered voter in the state and assign a
5 unique number to that voter; is that right?

6 A. That's right.

7 Q. And the Help America Vote Act, which I'll refer to as
8 HAVA, also requires states to conduct list maintenance on a
9 regular basis; isn't that right?

10 A. It does.

11 Q. And the term "list maintenance" means removing ineligible
12 voters from the rolls; isn't that correct?

13 A. That's right.

14 Q. In fact, HAVA requires states to ensure that the voter
15 registration records are accurate and updated regularly; isn't
16 that right?

17 A. That's right.

18 Q. And HAVA requires that states conduct list maintenance to
19 ensure that duplicate names are removed from the rolls; isn't
20 that right?

21 A. That's right.

22 Q. And you testified earlier that you're familiar with the
23 statute I'll refer to the as the NVRA, the National Voter
24 Registration Act; is that correct?

25 A. Yes, ma'am.

1 Q. And the NVRA allows registered voters, allows states and
2 counties to remove registered voters from the roles by reason
3 of criminal conviction; is that correct?

4 A. It does.

5 Q. And also by reason of mental incapacity; is that correct?

6 A. Right.

7 Q. And the NVRA also requires states to conduct a general
8 program to remove ineligible programs by reason of death; is
9 that right?

10 A. Right.

11 Q. And isn't it true that under Texas state law, county
12 registrars must immediately cancel the registrations of voters
13 who are reported dead, mentally incompetent or convicted of a
14 felony; isn't that right?

15 A. If we have a strong match and are sure that that dead
16 voter felon or incompetent is actually the registered voter,
17 yes, ma'am.

18 Q. And you testified earlier that when a voter has moved the
19 registrar puts the voter in a suspense category; is that right?

20 A. That is correct.

21 Q. And isn't it true that the numbers of voters on the
22 suspense list has been fairly consistent since 2008?

23 A. I would agree with that.

24 Q. In fact, as of April 30th, 2012, the number of voters in
25 suspense was slightly lower than it has been in recent years;

1 isn't that right?

2 A. That's right, we had about one and a half million in
3 April. At the end of each of the even numbered years before
4 that, in '10 and '08, there were just under two million, both
5 of those years. I think that partly the explanation for that
6 is the late date of the mass mail out this time.

7 Q. Isn't it true that some voters in the suspense category
8 include those who have not moved and have not responded to the
9 registrar's notice and haven't voted?

10 A. Sure.

11 Q. Indeed, some suspense voters, as you testified earlier,
12 appear at the poles and confirm their residence; isn't that
13 right?

14 A. Right. Usually when they fill out a statement of
15 residence it's their new address, and they're allowed to vote
16 one more time at their old polling place, and then they're
17 registered at the new polling place.

18 Q. And under Texas law you must vote at the precinct in which
19 you reside; is that correct?

20 A. That's right.

21 Q. And voters move with some frequency; isn't that right?

22 A. They do.

23 Q. And they often move locally within a county; is that
24 correct?

25 A. Most of the time.

1 Q. And then they must go to their new precinct; isn't that
2 correct?

3 A. Did you said they mustn't.

4 Q. They must go to their new precinct?

5 A. If they moved outside of their current precinct, you bet.

6 Q. Suspense voters are listed on precinct rosters on the
7 polls; isn't that correct?

8 A. Yes.

9 Q. And there's a notation of "S" next to their name; isn't
10 that right?

11 A. That's right.

12 Q. And under current law a voter in suspense must show a form
13 of allowable photo or non-photo ID to vote; right?

14 A. That's right, and fill out a statement of residence.

15 Q. So to impersonate a voter who was on suspense, you would
16 have to first identify who's on the suspense list; right?

17 A. I don't know. I imagine so, but I'm trying to think of a
18 contrary example.

19 Q. So you would agree that you'd first -- if you were intent
20 upon impersonating a suspense voter, you would have to first
21 identify who's on the suspense list; isn't that right?

22 A. Right.

23 Q. Otherwise how would you know who to impersonate; isn't
24 that right?

25 A. I would not agree with that, no. I think that the voter

1 impersonation that happens is more of an opportunity than a
2 deliberate plan.

3 Q. But you would have to know who you're impersonating in
4 order to impersonate someone; isn't that right?

5 A. That's true.

6 Q. And second, you would have to steal or otherwise obtain
7 someone's ID?

8 A. That is not correct, no.

9 Q. How so?

10 A. If you've got the voter registration card because it came
11 to your house because it's a deceased family member, then
12 you've got the voter ID card. If it's someone else, then I
13 guess.

14 Q. So would you have to either steal or otherwise obtain
15 someone's ID or you would have to live in the same household
16 and receive it; right?

17 A. I guess what I'm having trouble with is the ID part. If
18 you're calling the voter registration card an ID, then yes, I
19 agree with you.

20 Q. And then finally to impersonate a suspense voter, you'd
21 have to go to the polls to present someone else's photo ID and
22 then execute and submit a false statement to a pole worker;
23 isn't that right?

24 A. That is not correct, no.

25 Q. You'd have to submit a statement of residence; isn't that

1 right?

2 A. You would have to submit at statement of residence, but
3 not a photo ID.

4 Q. I think you didn't hear my question, so let me rephrase.

5 The last step in impersonating a suspense voter would be
6 that you would have to go to the polls, use another person's
7 ID, either photo or non, as required by current law, and then
8 submit a statement of residence; isn't that right?

9 A. That's true.

10 Q. Only U.S. citizens can legally vote; isn't that correct?

11 A. That's correct.

12 Q. Individuals who are legally in the country, but who are
13 not U.S. citizens are not legally permitted to vote; isn't that
14 right?

15 A. Yes, ma'am.

16 Q. Isn't it true that SB 14 will not prevent all non-citizens
17 from voting?

18 A. That's true, if they decide to.

19 Q. And I believe you testified earlier that Senate Bill 14
20 allows the use for six forms of photo ID; isn't that right?

21 A. I thought it was seven, but I'll -- I heard Adam say six,
22 and I thought it was seven when he said it.

23 Q. Do you know those forms of ID?

24 A. I don't know if I've got the entire list off the top of my
25 head.

1 Q. Would you agree that they are a driver's license, election
2 identification card, personal state ID, U.S. military ID, U.S.
3 citizenship certificate with a photo, and those are not expired
4 within 60 days of presentation?

5 A. Right.

6 Q. In addition to a U.S. passport and a license to carry a
7 concealed handgun?

8 A. Right.

9 Q. Is that the full list, to the best of your memory?

10 A. That sounds right.

11 Q. And isn't it true that non-citizen permanent residents may
12 obtain a Texas driver's license?

13 A. Yes.

14 Q. Isn't it also true that non-citizens who are in Texas on a
15 visa may obtain a Texas driver's license?

16 A. That's true, but if you're here on a temporary visa you
17 get marked "temporary" on your card.

18 Q. Isn't it also true that certain non-citizens may serve in
19 the U.S. military and obtain a military ID?

20 A. That's true.

21 Q. So assuming that these non-citizens that we've just
22 discussed became registered to vote, even though they weren't
23 supposed to, and they had an allowable form of photo ID, SB 14
24 would not prevent them from voting; isn't that right?

25 A. With the exception of the temporary ID, I agree with you.

1 Q. So the answer is yes?

2 A. That's right.

3 Q. Under Senate Bill 14, poll workers have some discretion in
4 verifying a voter's ID; isn't that right?

5 A. That's right, the current system gives them wide
6 discretion as well.

7 Q. But under Senate Bill 14 the workers often have
8 discretion; isn't that right?

9 A. That's right, the same discretion that they have now.

10 Q. Under Senate Bill 14, the voter's identity must be
11 verified from the documentation ID; correct?

12 A. That's right.

13 Q. And the poll worker is responsible for verifying the
14 voter's identity; correct?

15 A. That's right, just like they are now.

16 Q. And the picture on a non-expired Texas driver's license
17 can be as old as 12 years; isn't that right?

18 A. I'm not sure exactly the time frame, but you can renew on
19 line with the same picture for a certain period of time before
20 you have to get a new picture.

21 Q. And the photo on a non-expired U.S. passport can be ten
22 years old; right?

23 A. That I have no idea about.

24 Q. And citizenship certificates can be decades old; is that
25 correct?

1 A. I don't know.

2 Q. Under Senate Bill 14, a poll worker must match the voter's
3 name on the registration list with the voter's name on the
4 photo ID; right?

5 A. That's right.

6 Q. If the voter's name on a presented ID does not match
7 exactly the name on the registration list, it must be
8 substantially similar to the voter's name; right?

9 A. It's not an exact match, it must be substantially similar,
10 that's right.

11 Q. And the poll worker has discretion under Senate Bill 14 in
12 that regard; is that right?

13 A. They do, and they have that same discretion now if you
14 show up to vote with a utility bill. If you don't have a
15 similar name, you will not be allowed to vote or you'll be
16 allowed to vote provisionally.

17 And the difference is under SB 14, you'll have an
18 opportunity to come back and show a different ID within the
19 next six days.

20 Under current law, that provisional ballot will most likely
21 be rejected.

22 Q. And if the poll worker concludes, this is under Senate
23 Bill 14, that the name is not similar, the voter must vote by
24 provisional ballot; right?

25 A. That's right.

1 Q. And this ballot won't be counted unless the voter presents
2 a compliant ID to her county registrar in six days; isn't that
3 right?

4 A. They will have a six-day opportunity to cure. I don't
5 think that necessarily it won't be counted. If someone on the
6 ballot board, a voter votes provisionally with an ID that's got
7 a different name. They'll have the opportunity to revisit that
8 question at the time they're considering the provisional votes
9 if they need to.

10 Q. And has -- there hasn't been a regulation promulgated to
11 that effect, has there?

12 A. That's current law. That's current law, current
13 regulation, current, I don't know -- that part's not going to
14 change. SB 14 didn't change current law, it just added to it.

15 Q. And Senate Bill 14 didn't make that change that you just
16 described; correct?

17 A. No.

18 Q. And under current law, a poll worker verifies the name of
19 a voter as it appears on the registration rolls with the name
20 of the voter as it appears on the voter's ID; right?

21 A. Right, whatever the ID is. It can be a utility bill or a
22 bank statement, a pay stub, whatever they bring.

23 Q. And the required ID is, under current law, is either a
24 voter registration certificate or another form of ID, photo or
25 non-photo; is that right?

1 A. Right.

2 Q. A voter registration certificate is created from a voter
3 registration application; is that correct?

4 A. That's true.

5 Q. So the name on a voter registration certificate would be
6 the same exactly as the name on the voter registration list; is
7 that right?

8 A. One would hope so unless something has gone horribly
9 wrong.

10 Q. Assuming no clerical errors; is that correct?

11 A. Assuming no clerical errors.

12 Q. Is it fair to say that in that circumstance when a voter
13 is using a voter registration certificate, and the poll worker
14 is determining the voter's identity that there is virtually no
15 room for poll worker error?

16 A. I agree with that. I mean, there's always room for error,
17 but it's much less.

18 Q. And poll workers in that circumstance are not exercising
19 any discretion; is that correct.

20 A. That's correct.

21 Q. Absentee ballots and voter absentee is not the same as
22 voting in person, is it?

23 A. It is not.

24 Q. And the ID requirements, the photo ID requirements of
25 Senate Bill 14 don't apply to early voting by mail; right?

1 A. That's right.

2 Q. Isn't it true that only certain voters are eligible to
3 cast a ballot by mail?

4 A. That's right.

5 Q. Voters who are 65 years of age and older are eligible to
6 vote by mail; right?

7 A. They are.

8 Q. Voters with a physical condition that would prevent them
9 from voting without assistance or injuring their health are
10 eligible to vote by mail; isn't that right?

11 A. That's right.

12 Q. Voters who expect to be absent from the county on election
13 day and during the early voting period are eligible to vote by
14 mail; right?

15 A. They are if they have the absentee ballot sent to a
16 residence or a mailing address out of the county.

17 Q. And certain voters who are detained in jail are also
18 eligible to vote by mail; isn't that right?

19 A. That's right if they have the ballot mailed to the jail.

20 Q. And no other categories of voters are eligible to cast a
21 ballot by mail; isn't that right?

22 A. Not that I know of.

23 Q. A voter who wishes to vote by mail must submit an
24 application by hand delivery, mail, contract carrier or fax; is
25 that correct?

1 A. Yes.

2 Q. A person can't verbally request a mail ballot; is that
3 right?

4 A. They cannot.

5 Q. A person can't apply on line for a mail ballot; is that
6 right?

7 A. They cannot.

8 Q. A voter must include in her request for a mail ballot the
9 reason she's eligible to vote my mail; right?

10 A. That's right.

11 Q. And an application for a mail ballot cannot be submitted
12 prior to sixty days before an election; correct?

13 A. That's right except for this crazy year we've just had.

14 Q. And the application also needs to be submitted by the
15 seventh day before an election unless it's hand delivered to
16 the clerk; is that right?

17 A. That's right.

18 Q. And an absentee ballot might not be mailed for a week
19 after the request is received; correct?

20 A. I don't know how long it takes them to turn those around.

21 Q. But it might -- it might not be mailed for a week; is that
22 right?

23 A. I don't know how long it takes them to turn those around.

24 Q. For a mail ballot to count, the ballot has to be sent in
25 the official carrier envelope; correct?

1 A. It does.

2 Q. And the early mailing clerk must receive the ballot by the
3 time the polls close on election day; right?

4 A. That's right except for the overseas ballots.

5 Q. Which means the ballot must be mailed by the voter in
6 advance of election day; is that right?

7 A. That's right.

8 Q. Isn't it true that Senate Bill 14 exempts a very limited
9 class of voters from photo ID requirements who are persons with
10 disabilities?

11 A. I don't know what you mean.

12 Q. Well, let's go through it. Senate Bill 14 exempts from
13 the bill's photo ID requirements for certain persons who have a
14 disability; is that correct?

15 A. I reckon.

16 Q. So the answer is yes?

17 A. Yes.

18 Q. And that includes a person who has written documentation
19 from the United States Social Security Administration
20 evidencing that the applicant has been determined to have a
21 disability and doesn't have a form of ID under Senate Bill 14;
22 isn't that right?

23 A. I believe so, yes, ma'am.

24 JUDGE COLLYER: Do you know this part of the bill?

25 THE WITNESS: I don't, I'm not as familiar with this

1 part of the bill, that's the reason I'm struggling. I prefer
2 to see the bill, but I'll take your word for it.

3 BY MS. WESTFALL:

4 Q. Is there something that would refresh your recollection?

5 A. Sure, Senate Bill 14.

6 Q. Certainly.

7 MS. WESTFALL: May I approach the witness?

8 JUDGE COLLYER: Yes.

9 THE WITNESS: Thank you.

10 BY MS. WESTFALL:

11 Q. Mr. Ingram, if you could turn your attention to the very
12 first page. I've just handed you Joint Appendix 001429.

13 MS. WESTFALL: And I would like to advise the Court
14 that the parties have stipulated to the admissibility of the
15 Joint Appendix.

16 JUDGE COLLYER: Thank you, ma'am.

17 I'm sorry, what was the number?

18 MS. WESTFALL: Yes, it's Joint Appendix 001429.

19 JUDGE COLLYER: Thank you.

20 MS. WESTFALL: Is the page number on which Senate
21 Bill 14, the signed copy begins. And it ends on page Joint
22 Appendix 001442.

23 BY MS. WESTFALL:

24 Q. Mr. Ingram, have you had a chance to review Section 1 of
25 Senate Bill 14?

1 A. Yes.

2 Q. Does this refresh your recollection as to this provision
3 in the bill?

4 A. It does.

5 Q. And isn't it true then under Senate Bill 14 it allows
6 persons with written documentation from the Social Security
7 Administration evidencing that the applicant has been
8 determined to have a disability and has no other form of ID
9 required by Senate Bill 14 to qualify for this exemption?

10 A. That's right.

11 Q. And isn't it true that the second exemption is for persons
12 with written documentation from the U.S. Department of Veterans
13 Affairs evidencing a disability rating of at least fifty
14 percent, and that the voter has no other form of ID required by
15 Senate Bill 14?

16 A. I don't see that.

17 MS. WESTFALL: You know what, Your Honor, I think I
18 actually used -- may approach the witness because --

19 JUDGE COLLYER: Yes.

20 MS. WESTFALL: -- this is the incorrect version of
21 Senate Bill 14 I've handed to you, sir, I'm very sorry, my
22 apologies.

23 If you will indulge me for one minute, I'm going to get
24 the correct copy.

25 (Pause.)

1 MS. WESTFALL: Your Honor, may I approach the
2 witness?

3 JUDGE COLLYER: Please do.

4 BY MS. WESTFALL:

5 Q. Mr. Ingram, you've been handed Senate Bill 14, Joint
6 Appendix 003102. If you could review the first page, Section
7 1, regarding the disability exemption?

8 A. Right.

9 Q. So isn't it true that there's a limited exemption for
10 persons with disabilities? The first class is persons who have
11 documentation from the Social Security Administration, and the
12 second class is persons who have documentation from the
13 Department of Veterans Affairs?

14 A. I agree with that. This is if a disabled person wants to
15 vote in person, these exemptions apply. If a disabled person
16 wants to vote by mail, they do not have to prove any of this.

17 Q. But this is, under Texas law, every voter has a right to
18 vote in person; do they not?

19 A. They do.

20 Q. And if you want to vote in person you may choose to do so;
21 isn't that correct?

22 A. That's correct, but if you want to under SB 14, you're
23 going to have to show a photo ID unless you prove that you're
24 disabled.

25 Q. And by disabled, you mean the definition which is quite

1 narrow under the statute; isn't that correct?

2 A. I don't know if it's quite narrow or not. I agree it's
3 the language that the legislature used.

4 Q. But it's not all persons with disabilities; isn't that
5 right?

6 A. I don't know.

7 Q. Well, turning your attention now to JA 3102, the statute
8 only exempts certain narrow classes of persons with
9 disabilities; isn't that correct?

10 A. I don't know about narrow. It has two definitions of
11 disability.

12 Q. And it's not all people with disabilities; isn't that
13 right?

14 A. I don't know.

15 JUDGE COLLYER: Okay. You can keep moving.

16 BY MS. WESTFALL:

17 Q. A registered voter who wishes to apply for this exemption
18 will have to reregister to vote with the county registrar;
19 correct?

20 A. Say that again? I'm sorry.

21 Q. A registered voter who wishes to apply for this exemption
22 for disability has to reregister with the county registrar;
23 isn't that right?

24 A. I would think of it as a supplemental registration, but
25 yeah, they've got to fill out another form, you know, the

1 postcard application that you saw before.

2 Q. And they also have to apply -- they also have to present
3 written documentation from either the Social Security
4 Administration or the Department of Veterans Affairs that --
5 and a statement that the applicant doesn't have an allowable
6 form of ID; isn't that right?

7 A. That's right.

8 Q. SB 14 requires that voters who appear without an allowable
9 photo ID must cast a provisional ballot; isn't that right?

10 A. That's true.

11 JUDGE COLLYER: I have a question, excuse me.

12 You asked the question about whether someone with a
13 disability who is receiving VA or SSA benefits, SSI, needs to
14 reregister, you said no. You said it's supplemental, but then
15 you said they have to fill out the same postcard.

16 THE WITNESS: Right. And I guess you would think of
17 that as registering again, but they're already a registered
18 voter, and this is providing supplemental information, so I
19 don't think of it as registering again because in the TEAM
20 system, they're an active registered voter.

21 JUDGE COLLYER: Yeah.

22 THE WITNESS: I understand that procedurally from the
23 applicant's perspective, it looks like registering again, but
24 it's not really.

25 JUDGE COLLYER: Thank you. Okay, I just wanted to

1 make sure it was the same thing. Go ahead.

2 MS. WESTFALL: Thank you, Your Honor.

3 BY MS. WESTFALL:

4 Q. Not all provisional ballots are counted; isn't that right?

5 A. That's true.

6 Q. In fact, many of them are not counted; isn't that right?

7 A. That's what I was saying before. When the poll workers
8 use their discretion now to make a voter vote provisionally,
9 the odds are not good for that voter's vote to count. I think
10 the odds will improve under the SB 14 with the six-day cure
11 period.

12 Q. So voting a provisional ballot that isn't counted isn't
13 the same as voting a regular ballot; right?

14 A. That's true.

15 Q. Because regular ballots are always counted; right?

16 A. One would hope so. I hesitate, you know.

17 Q. Under Senate Bill 14 you just testified voters who cast a
18 provisional ballot will have six days to cure their ballot;
19 right?

20 A. That's right.

21 Q. And to cure their ballot and ensure it will be counted, a
22 voter has to bring one of the allowable forms of ID to the
23 registrar; right?

24 A. They've got several options they can do at that point.

25 They can apply for a religious exemption, they can apply for a

1 disability exemption or they can bring one of the allowable
2 forms of ID.

3 Q. So one of the mechanisms is to bring an allowable form of
4 ID; right?

5 A. That's right.

6 Q. And there are only two exceptions to the rules which you
7 testified to or alluded to. The first is if the voter executes
8 an affidavit indicating that she has a consistently held
9 religious objection to being photographed; isn't that right?

10 A. That's right.

11 Q. And the second is if the voter executes an affidavit
12 indicating the voter doesn't have any ID as a result of a
13 natural disaster declared by the president or by the governor
14 that occurred within 45 days; isn't that right?

15 A. That's right.

16 Q. These are the only two exceptions; is that right?

17 A. That's not true. They could also apply for the disability
18 exemption at that point.

19 Q. And other than those categories of voters, the persons who
20 apply for the disability exemption, persons with an allowable
21 ID, and these two narrow classes, those are the only
22 exceptions; is that right?

23 A. I agree, but they are with the narrow again, I just don't
24 know if that's narrow or not.

25 Q. I believe you testified that you have six days to cure a

1 provisional ballot; is that right?

2 A. That's right.

3 Q. In other words, if an election were was on Tuesday, the
4 voter would have to cast a provisional ballot by the following
5 Monday; isn't that right?

6 A. Well, they would have to cast the provisional ballot at
7 the time they're voting on Tuesday.

8 Q. I'm sorry. Thank you for the clarification. They'd have
9 to appear at the registrar within six days?

10 A. That's right.

11 Q. And some registrars open -- offices are not open on
12 weekends; is that right?

13 A. That's right.

14 Q. And some registrars' offices are not open after business
15 hours; is that right?

16 A. That's right.

17 Q. And isn't it true that the Secretary of State's proposed
18 regulation relating to this section of Senate Bill 14 only
19 requires that these offices, that during the six-day window the
20 county registrar office stay open just during regular business
21 hours at a minimum; is that right?

22 A. That's right. They can obviously opt to stay open more.

23 Q. But the regulation doesn't include any requirement for
24 registrars to have extended hours during the six-day period; is
25 that right?

1 A. That's right, we don't have the ability to force unfunded
2 mandates on the counties.

3 Q. But your answer is -- your answer is yes, that the
4 regulations don't require them to stay open past business
5 hours; is that right?

6 A. That's right, we can't force such a thing.

7 Q. I believe you testified about Exhibit PX 100, this map
8 here; correct?

9 A. Right.

10 Q. And isn't it -- isn't the -- and it's based in part on
11 information from the ACS; is that correct?

12 A. That's right.

13 Q. And isn't the ACS an estimate over a twelve-month period?

14 A. It is.

15 Q. Isn't Texas growing extremely quickly?

16 A. Yes, parts of it are, but the one year average that you're
17 talking about is for the smaller counties that are not growing
18 as fast as the larger counties.

19 Q. But under a twelve-month estimate there would be a lag in
20 registration figures, wouldn't there?

21 A. I would imagine so, yes.

22 Q. And how does the map account for competence ranges?

23 A. I don't know.

24 Q. Are you aware of the response rate for the ACS?

25 A. I am not.

1 Q. Isn't it between ninety to a hundred percent?

2 A. I don't know.

3 Q. And turning your attention to PX 100, aren't most of the
4 counties on this map green?

5 A. Yes, they're either dark green or pink, most counties.

6 Q. And doesn't it mean that under existing state and federal
7 law county officials can maintain their voting rules through
8 this maintenance?

9 A. Can they? They must.

10 Q. Let me put it a different way. Doesn't the fact that most
11 of this map is green mean that there isn't a concern with
12 bloated rolls within the eligible voters?

13 A. No, because like I was saying, the eighty to eighty-nine
14 percent, the dark green, is also an excess of the state
15 average.

16 Now, you think some portion of that is voter interest in
17 those counties, for instance, Williamson and Travis County, I
18 would imagine have a fairly high proportion as well as Hays,
19 Burnet and Bastrop Counties have a high proportion of very
20 interested folks. Other than that, you know, you start talking
21 about Loving County with a hundred and fifty-seven percent
22 voter registration rate to population, that's -- that's
23 unusual, there's got to be an explanation for that.

24 Q. Let's talk about Loving County.

25 JUDGE COLLYER: Which county is this?

1 THE WITNESS: Loving County, it's the one right there
2 by the corner where New Mexico notches out Texas, the smaller
3 county.

4 JUDGE COLLYER: Okay.

5 THE WITNESS: Culberson is the bigger one.

6 MS. WESTFALL: If I may approach, I may be able to
7 identify Loving County for the Court if that will be helpful.

8 JUDGE COLLYER: I think I just got it, but that would
9 be helpful. Why don't you, just to be sure.

10 MS. WESTFALL: Okay. Right here.

11 THE WITNESS: It is the smallest population county in
12 Texas.

13 BY MS. WESTFALL:

14 Q. Isn't it less than a hundred people?

15 JUDGE COLLYER: Less than a hundred? Fewer than a
16 hundred people in the whole county?

17 THE WITNESS: I don't know if there's -- I thought it
18 was closer to 300, but yeah, it's a small population.

19 BY MS. WESTFALL:

20 Q. And isn't it fairly unlikely in a county of that size for
21 a person to walk into a polling place in Loving County and try
22 to commit in-person voting fraud?

23 A. It is unlikely that you can do voter impersonation in
24 Loving County. The fellow out there is who is the election
25 administrator is also the county clerk is also the sheriff.

1 And he and I had a long conversation about his voter rolls, and
2 it was very interesting.

3 It's his opinion that the residency laws in Texas need to
4 be tightened up because in his opinion the reason for the large
5 discrepancy is that children move away from Loving County,
6 they'll go down to Houston or Dallas, but they keep their voter
7 registration at mom's house in Loving County, and then they
8 will come home and vote because uncle so-and-so is running for
9 county commissioner, and they believe the vote counts more in
10 Loving County than it would in Harris County.

11 And so he's very engaged in the idea that the residency
12 laws need to change in Texas.

13 MS. WESTFALL: And I will move to strike the
14 testimony about the clerk in Loving County as hearsay, Your
15 Honor.

16 JUDGE COLLYER: Okay. Go ahead. I would say it's
17 basically irrelevant so don't worry about it. But it was
18 interesting.

19 BY MS. WESTFALL:

20 Q. Would you agree that in counties with small populations
21 it's more likely that poll worker will know the voters?

22 A. I agree with that.

23 JUDGE COLLYER: With only a hundred people, I think
24 that's right.

25

1 BY MS. WESTFALL:

2 Q. But in counties other than Loving County that have small
3 populations, is it likely that poll workers will know the
4 voters?

5 A. I would say that definitely increases the odds.

6 Q. And turning your attention now to PX 100, isn't it true
7 that most, if not all of the counties over a hundred percent in
8 this map have small populations; is that correct?

9 A. Most of them are rural counties, Polk is the exception,
10 it's got more population than the rest of them, I believe.

11 MS. WESTFALL: If I may have one moment, Your Honor.

12 JUDGE COLLYER: Yes.

13 Which one is Polk?

14 THE WITNESS: Polk County is the one over there in
15 east Texas, almost to Louisiana, the dark red one over there.

16 JUDGE COLLYER: Up high at the bulge?

17 THE WITNESS: Right at the bulge, right, you see the
18 long Newton and Jasper Counties that are along next to it, and
19 then, I believe that's Trinity.

20 JUDGE COLLYER: Okay.

21 JUDGE TATEL: Which county are you talking about?

22 THE WITNESS: I'm talking about Polk County.

23 BY MS. WESTFALL:

24 Q. Mr. Ingram, you testified about a number of instances
25 concerning ineligible voters who purportedly participated in

1 the recent election; isn't that right?

2 A. That's right.

3 Q. And that was a recent election, correct, this year in
4 2012; right?

5 A. May 29th, 2012 election, yes.

6 Q. None of that information could have been before the
7 legislature when it was considering SB 14; isn't that right?

8 A. That's true.

9 Q. Because it happened after the bill was signed into law;
10 isn't that right?

11 A. That's right.

12 Q. I believe you testified that there may have been, perhaps
13 were identified four dead people who had participated in the
14 election; is that right?

15 A. That is not correct.

16 Q. How many people?

17 A. Two hundred and thirty-nine.

18 Q. But then you whittled it down, based on looking at death
19 records or death certificates, that perhaps four people had
20 voted; is that your testimony?

21 A. No, I mean, I whittled it down because those are the ones
22 that I can confirm, there's no doubt about it, but that's being
23 very conservative.

24 The fact is that all 239 of these are going to get referred
25 to the OAG.

1 Q. And you can't say with any -- first of all, there haven't
2 been any convictions, have there?

3 A. No, ma'am.

4 Q. And prosecutions or investigations of a criminal nature
5 and a legal nature have not been undertaken as of today; is
6 that correct?

7 A. That's right.

8 Q. And sitting here today you can't say with certainty, can
9 you, that it wasn't clerical error that identified a person is
10 dead and having voted in the election; isn't that right?

11 A. Well, the way I see it, there's two source of possible
12 clerical error on this. There's the possible source from the
13 county voter history side, and there's the possible source from
14 the DPS, deceased persons side.

15 And so yes, there's the possibility of clerical error, and
16 I hope that that is the case for the majority of these, but I
17 know for four of them, it's not.

18 Q. You can say with certainty, absolute certainty sitting
19 here today that it's clerical error, given that there has not
20 been criminal prosecution?

21 A. What I know is that for sure, for four of these, the
22 counties where they reside reported them to have voted in
23 person for this election.

24 MS. WESTFALL: I have no further questions.

25 JUDGE COLLYER: All right, thank you very much.

1 MR. DUNN: Good morning. My name is Chad Dunn, and I
2 represent the Defendant-Intervenors.

3 JUDGE COLLYER: Thank you, sir.

4 **CROSS EXAMINATION**

5 BY MR. DUNN:

6 Q. Mr. Ingram, good to see you again.

7 A. Good to see you.

8 Q. As I understand your testimony, you work for the Secretary
9 of State's Office in the administration of elections; is that
10 true?

11 A. That is true.

12 Q. And the job, of course, of that office is to call the
13 balls and strikes of the election, you're sort of the empire;
14 is that a fact?

15 A. That's true.

16 Q. And when you administer these election laws, you want to
17 do so not just for partisan reasons or not just for the public
18 perception reason, but also to make sure the laws are fair to
19 individual races, whether it's Anglos, Latinos, et cetera; is
20 that a fact?

21 A. I agree with that.

22 Q. Yeah. It's true, though, that it is your opinion, your
23 personal opinion that the Senate Bill 14 is a good piece of
24 legislation; is that a fact?

25 A. That is true, my personal opinion is that it was a good

1 law.

2 Q. And it's one that you think ought to be implemented; is
3 that true?

4 A. Well, I think it -- I think that both personally as well
5 as officially. You know, the Secretary of State's job is to
6 implement laws passed by the legislature, and so it is my job
7 to see that this law is implemented.

8 Q. Now, your predecessor, Ms. McGeehan, that had been in your
9 office for more than a decade was unwilling to quite go that
10 far in her testimony before the legislature; is that true?

11 A. I don't know.

12 Q. In fact, she said it wasn't her position to take a
13 position on the law; is that a fact?

14 A. That's true, and before law is passed, it is not our
15 position to take a position on a bill.

16 Q. She also didn't take a position, as you have, in her
17 deposition in this case?

18 A. I don't know, I haven't read her depo.

19 Q. Now, I'd like to move on to the NVRA. And I'm sure it was
20 just a slip of the tongue, but His Honor asked you what NVRA
21 stood for, you said the National Voting Rights Act, it's
22 actually the National Voter Registration Act?

23 A. That's right, I always get those two mixed up. I have
24 dyslexia.

25 Q. I understand. And the state has recently been sued, has

1 it not, for violation of the National Voter Registration Act?

2 A. It has.

3 Q. In fact, there's a case pending in Galveston where Judge
4 Costa is awaiting a ruling on with respect to several
5 allegations of violation of the National Voter Registration
6 Act?

7 A. We've got several alleged violations, there hasn't been a
8 finding by the court yet. I've expected a decision by now.
9 How about you?

10 Q. I have been expecting it. There's other decisions I
11 expect, too, but they don't always come when I expect them.

12 Now, some of the complaints made under the NVRA include out
13 of county. For example, it's now under new legislation passed
14 by this state legislature, the Texas legislature, it's now
15 unlawful for somebody to accept a voter registration
16 application from somebody who lives in an adjoining county; is
17 that true?

18 A. That is not true.

19 Q. In other words, if somebody runs a voter registration
20 drive in downtown Houston and happens to receive a voter
21 registration application from a resident of Montgomery County,
22 it's your testimony that's lawful under Texas law today?

23 A. Of course, it is. If they are registered in that
24 adjoining county as a volunteer deputy registrar, you bet.

25 Q. Okay. But if the deputy registrar is only registered in

1 Harris County where they're running the drive, they've
2 committed a law violation by accepting that application; is
3 that true?

4 A. Probably.

5 Q. Another recent restriction in voter registration in Texas
6 includes the requirement that a voter registration person,
7 somebody who accepts a voter registration can only accept one
8 that's complete; is that true?

9 A. That is not true. There is an obligation to check it for
10 completeness and ask the voter to finish it, but they can
11 receive them if they're not complete, you bet.

12 Q. In fact, it's a crime if a deputy voter registrar turns in
13 an incomplete voter registration application?

14 A. That is not true.

15 Q. On collecting applications, it is now state law in Texas
16 that a deputy registrar, a person who accepts an application
17 must be deputized; is that true?

18 A. That's true, but that's been the law for thirty years.

19 Q. And, in fact, an individual who went about and collected
20 voter registration applications in their high school class, for
21 example, and turned them in, if they had not been deputized,
22 would have violated the state law?

23 A. That's right, for the last thirty years or so.

24 Q. Now, there's also a number of restrictions that have been
25 recently implemented on processing voter registration

1 applications; isn't that true?

2 A. I don't know what you mean.

3 Q. For example, there are some counties in Texas, and to use
4 Mr. Mortara's example, if José De la Cruz fills out his voter
5 registration application, and the Harris County voter
6 registration clerk inputs it into the TEAM system without
7 spaces, and it's not matched, although it's in the TEAM system
8 with spaces, that person gets rejected in some counties; isn't
9 that a fact? Or do you not know?

10 A. I don't know one way or the other on that.

11 Q. In Harris County, for example, in 2008, they had rejected
12 sixty-eight thousand voter registration applications in the
13 lead up to the historic 2008 presidential election; is that
14 true?

15 A. I don't know.

16 Q. In fact, after that case, there had been a lawsuit against
17 Harris County, and there was a consent order entered that
18 prohibited many of Harris County's practices as they relate to
19 voter registration; is that a fact?

20 A. I don't know about your characterization of it. I know
21 there was a lawsuit.

22 Q. And you know there was a settlement that was entered by
23 the federal court?

24 A. I don't know the resolution of that lawsuit.

25 Q. The point is, Mr. Mortara makes the case here that there's

1 this ease of registration. Do you remember him using that
2 phrase?

3 A. That's true.

4 Q. But, in fact, Texas in many of its counties on an ad hoc
5 basis have erected barriers to voter registration in Texas?

6 A. That is not true.

7 Q. Now, there was also some testimony I heard from you with
8 respect to the challenging of a voter on the roll and that it's
9 difficult under HAVA for county officials to remove voters from
10 the roll. Did I hear that right?

11 A. No, I believe that I was talking about the NVRA at that
12 point, but federal law makes it more difficult to remove voters
13 who have moved from the county.

14 Q. But in speaking of laws that you said have been around for
15 30 or so years, there is in Chapter 16 of the Election Code a
16 challenge procedure where any voter who's on the rolls
17 unlawfully can be challenged and removed; is that true?

18 A. Sure.

19 Q. In fact, any registered voter in Texas can challenge the
20 registration of any other registered voter; is that a fact?

21 A. That's true, and that's one of the things the sheriff in
22 Loving County and I talked about.

23 Q. And, in fact, some counties, including Harris County, and
24 now Loving County, are instituting their own challenges of
25 voters who are on the rolls?

1 A. I don't know anything about that.

2 Q. But to the extent that there are people on the voter roles
3 who shouldn't be there, there are tools in place for the state
4 and the county officials to do something about that; isn't that
5 true?

6 A. Within the constraints of federal law, you bet.

7 Q. And, but now I assume that your testimony in support of
8 Senate Bill 14 would be despite any negligence or malfeasance
9 by counties of the state and administration of the voter roll,
10 an additional barrier to voting ought to be erected to the
11 voters to undertake.

12 A. I don't know if I agree with that or not.

13 Q. Since we're talking about recent voting issues, you're
14 aware of a complaint that was made in Atascosa County to your
15 office on a May 12th city election where a Latino citizen was
16 denied the right to vote because they wouldn't produce a photo
17 ID; are you not?

18 A. I'm not aware of that complaint.

19 Q. You're not aware that a written complaint has been filed
20 with your office where a Latino citizen was prevented from
21 voting because they couldn't present a photo ID?

22 A. I am not aware of that complaint. I'm not saying that we
23 don't have it, I just haven't seen it yet. It hasn't --

24 Q. Is it the case -- I beg your pardon, sir. Were you
25 finished?

1 A. I was not.

2 Q. All right. Go ahead.

3 A. It hasn't come to my desk yet.

4 Q. Okay. Is it the case in your office that only the cases
5 that might support Senate Bill 14 make it to your desk, but the
6 other complaints do not?

7 A. That is most certainly not true.

8 Q. Now, you also mentioned that you being registered in
9 Williamson County and Travis County have the ability to vote in
10 both counties; is that true?

11 A. I could if I wanted to break the law.

12 Q. And I assume it's your position under Senate Bill 14 that
13 since you would have to present a driver's license under that
14 law, one of the counties would prevent you from doing so?

15 A. Probably.

16 Q. In other words, you live in Williamson County. If you
17 went to Travis County and your address showed your Williamson
18 County home, if the system is working correctly, you're going
19 to get rejected; is that true?

20 A. I'd probably be allowed to vote provisionally, but yeah.

21 Q. Similarly if you moved to Williamson County and changed
22 your registration, but had not yet had your address on your
23 driver's license changed, Williamson County, your home county
24 where you're supposed to vote, could similarly reject you; is
25 that a fact?

1 A. They could offer a provisional ballot, and you could go
2 explain the discrepancy within the next six days.

3 Q. You also mentioned the Donna Howard race. Donna Howard
4 was a state representative, she ran against the republican
5 nominee and won by a handful of votes; is that true?

6 A. That's right.

7 Q. And there was an election contest adjudicated by the
8 legislature in that case?

9 A. There was.

10 Q. And there was multiple allegations made by republican
11 nominee of rampant in-person voting; was there not?

12 A. There was rampant in-person voting in that election,
13 that's how those people vote, yes.

14 Q. There was allegations of rampant in-person voting fraud in
15 favor of the democratic nominee in that case?

16 A. I believe so, yes. I don't know about rampant, but there
17 were allegations of voter fraud, you bet.

18 Q. And despite adjudication by this very same legislature, no
19 such case was proven and Donna Howard was installed as the
20 state representative; is that true?

21 A. I don't know if they found no such case, but they did
22 install Donna Howard. There was not enough found to overturn
23 the race.

24 JUDGE COLLYER: When was that?

25 MR. DUNN: I believe it was 2008.

1 THE WITNESS: No, I think it was the 2010 election,
2 and the legislative session in 2011 is the one that held the
3 hearing.

4 MR. DUNN: That's right.

5 JUDGE COLLYER: And what did you do before January of
6 2012?

7 THE WITNESS: I worked for the governor in the
8 Appointments Office, appointments manager.

9 JUDGE COLLYER: So you didn't have anything to do
10 with elections?

11 THE WITNESS: No, the specific positions that I
12 appointed were judicial positions, and so I had to interface
13 with the Election Code with regard to the elections of judges.

14 JUDGE COLLYER: Thank you, sir.

15 MR. DUNN: Just a couple more questions.

16 BY MR. DUNN:

17 Q. On to this issue of whether or not a name is substantially
18 similar and discretion given to local voter registrars, are you
19 aware of some of the nicknames or other names used for the
20 first name Jesus?

21 A. Jesse.

22 Q. Any others?

23 A. I don't know of any others.

24 Q. Would it surprise you that Shuage and Shucko [phonetic]
25 are also names?

1 A. No, those fit.

2 Q. Do you expect that individual voter registrars in 254
3 counties are going to know these other names?

4 A. I don't know what they know. I would assume if they live
5 in a county with a fairly high Hispanic population that they
6 know it.

7 Q. And finally, in the recent legislative activity there have
8 been different regulations erected for voter registration,
9 there's been regulations adopted to stop organized registration
10 drives. There's been redistricting plans that at least one
11 court has enjoined, and now this photo ID law.

12 Would you agree that has been the lion share of the
13 election efforts by the Texas legislature?

14 A. I don't know about the characterization. It is what it
15 is.

16 Q. You are aware in Texas that there are some two million
17 Latino citizen voting age population that are not registered to
18 vote; is that true?

19 A. I know that that's what you said in Galveston, I haven't
20 independently verified it.

21 Q. You haven't looked at the census figures on your own to
22 determine that?

23 A. I have not.

24 Q. So you also don't know that there's three quarters of a
25 million African-American citizen voting ages not registered?

1 A. Right, we don't track voter registration by race, so I
2 have no idea.

3 Q. But the legislature spent considerable time concerned
4 about voter fraud, but really has passed nothing to further the
5 registration of these -- of these minority citizens; isn't that
6 a fact?

7 A. I don't know. The voter registration process is easy. So
8 I don't know what would facilitate that registration.

9 MR. DUNN: Thank you, Your Honors.

10 JUDGE COLLYER: All right. Is there any redirect?

11 MR. MORTARA: No, Your Honor.

12 THE COURT: All right, thank you very much. Sir,
13 you're excused.

14 THE WITNESS: Thank you, Your Honor.

15 (Witness excused.)

16 MR. McKENZIE: Good morning, Your Honors.

17 JUDGE COLLYER: Good morning.

18 MR. McKENZIE: John McKenzie for the State of Texas.

19 JUDGE COLLYER: Thank you, sir. Go right ahead, are
20 you going to call your next witness?

21 MR. McKENZIE: We'd like to call Representative José
22 Aliseda.

23 **JOSÉ LUIS ALISEDA, JR., PLAINTIFF WITNESS, SWORN**

24 THE DEPUTY CLERK: You may be seated.

25 MR. McKENZIE: May I begin?

1 JUDGE COLLYER: Please do so.

2 **DIRECT EXAMINATION**

3 BY MR. MCKENZIE:

4 Q. Representative Aliseda, please introduce yourself to the
5 Court?

6 A. My name is José, J-O-S-E, Luis, L-U-I-S, Aliseda, ALISEDA,
7 Junior.

8 Q. What is your current occupation?

9 A. I'm a state representative, I'm also a attorney and a
10 rancher that's slowly going broke because of the drought.

11 Q. What state house district do you represent?

12 A. I represent House District 35.

13 Q. How long have you represented District 35?

14 A. I was elected in 2010, and I sworn in in 2011.

15 Q. Did you serve on any committees during the eighty-second
16 legislative session in 2011?

17 A. I was on the Select Committee for Voter Identification and
18 Voter Fraud, and also the Criminal Jurisprudence Committee and
19 the Environmental Regulation Committee.

20 Q. Before we get into the circumstances that led you to run
21 for the position of state representative, please tell the Court
22 where you are from?

23 A. I was born in Mexico City, Mexico. I came to this country
24 at the age of four. I grew up in Illinois. When I was
25 seventeen years old, my father moved us to McAllen, Texas, and

1 I graduated from McAllen High School.

2 Q. And when did you become a United States citizen?

3 A. I became a U.S. citizen at the age of seventeen.

4 Q. Where do did you attend college?

5 A. I went to the University of Texas at -- well, Pan American
6 University initially, which is in Edinburg, Texas down in the
7 valley, for two years, and then transferred to the University
8 of Texas at Austin and got a bachelor of arts degree with a
9 major in English. And then I went on to law school at the
10 University of Texas at Austin, School of Law.

11 Q. And where did you work after graduating from law school?

12 A. In my last year of high school, I joined the -- excuse me,
13 of law school, I joined the United States Navy. And I was a
14 JAG officer for five years stationed in D.C., San Francisco,
15 and ultimately ended up at Naval Air Station, Chase Field,
16 Beeville, Texas as their staff judge advocate. I was the legal
17 adviser for the entire base, and that's how I ended up in
18 Beeville, Texas.

19 Q. And is state representative for House District 35 the
20 first elected position you have run for and held?

21 A. I've been the county attorney for Bee County for eight
22 years, I served as the county judge for Bee County for four
23 years. The governors placed me on various boards and
24 commissions, one of which was the Board of Pardons and Parole
25 for five years. I also ran for congress and lost.

1 Q. And what party were you affiliated with when you first ran
2 for county attorney in Bee County?

3 A. It was in 1988, I ran as a democrat, and was elected as a
4 democrat.

5 Q. And are you a democrat now?

6 A. No, I switched parties in '91.

7 Q. And why did you switch parties?

8 A. The democrats weren't very happy with me, I prosecuted
9 some voter fraud cases, I had some run-ins with some of the
10 elected officials, democratic elected officials, so they
11 recruited a candidate against me, and I -- at the time the
12 republican party was interested in building the party. They
13 asked President Bush, the first President Bush, to meet with me
14 and talk to me. He came down for a bird hunt, a quail hunt.
15 He used to come pretty regular to Bee County for that reason.
16 And he personally asked me to switch parties, and I switched.

17 Q. Sounds like a good reason.

18 JUDGE COLLYER: Objection sustained.

19 MR. McKENZIE: Sorry.

20 BY MR. McKENZIE:

21 Q. Why did you decide to run for the Texas House of
22 Representatives?

23 A. I ran against a three-term incumbent who wasn't
24 representing the district well. She wasn't representing our
25 district, which is a conservative seven county district south

1 of San Antonio, west of Corpus Christi, east of Laredo and
2 north of the valley. And she was voting like a liberal so I
3 ran against her.

4 Q. And what platform do you run on?

5 A. I ran on a conservative platform. Primarily four planks,
6 one which was voter identification and voter fraud. Another
7 was fiscal responsibility. I had a pro life platform.

8 And in addition, redistricting was one of the issues I
9 talked about.

10 Q. Are you running for a different elected office now?

11 A. I've had too much fun in Austin so I'm going to be the
12 next district attorney for Bee, Live Oak and McMullen County,
13 and I don't have any opposition.

14 JUDGE COLLYER: And where is that, I'm sorry?

15 THE WITNESS: If you look at the map, ma'am, could I
16 point it out to you?

17 JUDGE COLLYER: Yeah, I didn't hear the names, what
18 did you say?

19 THE WITNESS: Bee, Live Oak and McMullen County.

20 JUDGE COLLYER: Thank you. I just didn't get you.

21 THE WITNESS: This is my current here, (Indicating).

22 JUDGE COLLYER: Thank you.

23 THE WITNESS: Bee is this county, that's where I'm
24 from, Live Oak and McMullen.

25 JUDGE COLLYER: Thank you very much.

1 BY MR. MCKENZIE:

2 Q. I should have asked for the record, could you describe all
3 of the counties in your current house district the one you were
4 elected in?

5 A. All right, Atascosa County, Bee County, which is my home
6 county, Live Oak County, which is a neighboring county,
7 McMullen County which neighbors McMullen -- which neighbors
8 Live Oak County, Goliad, Karnes and Jim Wells County.

9 Q. Have you recently campaigned on behalf of democratic and
10 republican candidates?

11 A. Yes.

12 Q. I'd like to shift focus your experience as the
13 county attorney for Bee County. When did you serve as county
14 attorney for Bee County?

15 A. I was county attorney from 1988 to 1996.

16 Q. And who were the people that talked you into running for
17 county attorney?

18 A. Initially it was the, what I would call the democrat party
19 leaders in Bee County. They convinced me, and they convinced
20 any possible opposition that I was the man for the job. So I
21 ran unopposed.

22 Q. What were your responsibilities as county attorney?

23 A. County attorney is primarily a misdemeanor prosecutor, but
24 we also have jurisdiction over official misconduct charges in
25 District Court. And we have jurisdiction over mental

1 commitments. We also advise the Commissioner's Court for legal
2 matters. So it's pretty broad.

3 Q. It was a paid position?

4 A. It paid at the time around twenty-four thousand dollars a
5 year.

6 Q. Was it a full-time position?

7 A. It was actually considered a part-time position. I was --
8 it was myself and a secretary, I had no investigative staff, no
9 other staff. At the time I didn't think it was going to be
10 such a difficult job, but it turned out to be pretty difficult.

11 Q. I'd like to explore some of the voter fraud cases that
12 arose during your tenure as Bee County attorney.

13 Do you recall a mail ballot fraud investigation in Bee
14 County?

15 A. Yes.

16 Q. And what happened in that investigation?

17 A. We had allegations of racists being one. I -- what was
18 considered at the time mail and ballot fraud. And we're
19 talking about commissioners races, school board elections,
20 primarily county-wide elections. And we had unusual things
21 going on in that you would have, for example, a commissioners'
22 race being decided by maybe five, six hundred votes passed and
23 two or three hundred of those were mail-in ballots.

24 So I tried to get the sheriff's department and the police
25 department to look into it. It's a political hot potato, they

1 weren't interested.

2 We'd also had Grand Jury investigations from prior
3 elections that had claimed that there was some voter, mail-in
4 voter fraud going on. So I asked the Texas Rangers to come
5 down to Bee County and look into the matter.

6 Q. And did any charges result from that investigation?

7 A. Initially the Texas Rangers came to the county for a few
8 days and then left with the public pronouncement saying there
9 was no voter fraud in Bee County. And I'd obtained the records
10 at the municipal golf course indicating that they had been
11 golfing with one of the suspects in the voter fraud
12 investigation, and I showed it to their supervisor and they
13 came back and down and they managed today scrounge up about
14 four cases for me to file.

15 Q. And did you get any convictions in those cases?

16 A. I did. Two cases.

17 Q. In 1992, did you hear of allegations of threats to elderly
18 voters?

19 A. I had an elderly person call my office and say that at one
20 of the polling places, which was a senior citizens' meal center
21 and recreation center, they were being told that they had to
22 vote a certain way or their benefits would be lost.

23 Q. Do you recall what happened as a result of these
24 allegations?

25 A. The Commissioners' Court moved the polling place.

1 Q. Did you ever investigate allegations of broken seals on
2 ballot boxes?

3 A. Yes, I had -- this all kind of melds together because it
4 was such a strange time in Bee County. The state as a whole
5 was switching from democrat to republican, and there was just a
6 lot of controversy, and there was a time where actually
7 impounded -- asked the district judge to impound eighteen
8 hundred ballots, and she did.

9 And I think that might have been the same time that there
10 was an allegation that one of the seals was broken on one of
11 the boxes. I don't remember if was an early, early ballot box
12 or if it was a -- an election day ballot box.

13 Q. What did your experience as county attorney in Bee County
14 tell you about voter attitudes on voter fraud in south Texas?

15 A. At least in my county the people were clambering for
16 somebody to do something, they didn't trust the system.

17 Some would say, you know, what's the point of voting if my
18 vote is going to be canceled out by one of these mail-in ballot
19 fraud votes. So as a whole, the reason I did what I did was to
20 give people back the confidence in the system.

21 MR. FREEMAN: Objection, Your Honor, the witness was
22 offering a series of hearsay statements.

23 MR. MCKENZIE: I'm offering it for the effect on the
24 witness of what his beliefs as a prosecutor were when he heard
25 these things from the voters.

1 JUDGE COLLYER: All right. Well, we'll accept this
2 for the purposes of the state of mind of the witness, not for
3 the truth of the matter asserted.

4 MR. FREEMAN: Thank you.

5 JUDGE COLLYER: Go ahead, Representative Aliseda.

6 THE WITNESS: Thank you.

7 BY MR. McKENZIE:

8 Q. Based on your experience as a prosecutor, how does voter
9 fraud in south Texas work?

10 A. We have a political law system in south Texas. And I
11 think that you have the same thing.

12 JUDGE COLLYER: Sustained. Sustained. I mean, you
13 haven't really provided a foundation for this testimony for
14 which there's no other support, is there?

15 MR. McKENZIE: Okay, well maybe --

16 JUDGE COLLYER: A little foundation before you get
17 there.

18 MR. McKENZIE: Sure.

19 JUDGE COLLYER: I mean, that was a kind of conclusory
20 statement.

21 MR. McKENZIE: Okay. Let me go back.

22 BY MR. McKENZIE:

23 Q. Based on your investigation of the mail-in ballot fraud
24 that you conducted as a prosecutor that led to four charges and
25 two convictions that you testified about, how did voter fraud

1 work in that -- in that particular investigation?

2 A. It's -- in Bee County we had political bosses, and they
3 controlled who ran, they also controlled these people called
4 politiqueros, politiqueras. If you need me to spell it, I can
5 spell it, P-O-L-I-T-Q-U-E-R-A-S [sic]. And the male version is
6 O-S at the end.

7 And what these individuals would do, they were vote
8 harvesters. They would go out and find elderly people, get
9 them to sign an application for a mail-in ballot. When the
10 ballot would go out of the county clerk's office they literally
11 follow the -- the postman to the elderly person's home, enter
12 the home, and then suggest by word sign or gesture how that
13 individual should vote.

14 And in some cases I believe that there was actually no
15 voter voting the ballot or if they voted the ballot wrong
16 somehow that ballot would disappear. Those were things that
17 were discovered in the course of the investigation.

18 JUDGE COLLYER: Wait one second.

19 THE WITNESS: Yes.

20 JUDGE COLLYER: I think we have an objection.

21 MR. FREEMAN: Objection, Your Honor, lack of
22 foundation with regard to whether an individual ballot was not
23 voted by the voter.

24 JUDGE COLLYER: All right, there is a lack of
25 foundation, but it's going to be admitted for impact on the

1 speaker, not for the truth of the matter asserted.

2 Go ahead.

3 Yes, sir, Mr. Freeman?

4 MR. FREEMAN: Also lack of personal knowledge, Your
5 Honor, with regard to these ballots that were not actually
6 voted by the individual voter.

7 JUDGE COLLYER: Did you have a response to that one?

8 BY MR. MCKENZIE:

9 Q. This is a part of your investigation; is that correct?

10 A. It is things that we learned throughout the investigation,
11 yes.

12 JUDGE COLLYER: Sorry, I'm sorry, just let me be
13 precise.

14 THE WITNESS: Uh-huh.

15 JUDGE COLLYER: During the course of your
16 investigation the Texas Rangers discovered that there were
17 votes cast by elderly people that they didn't complete
18 themselves?

19 THE WITNESS: Yes.

20 JUDGE COLLYER: Is that the issue?

21 MR. FREEMAN: Your Honor, he also testified that the
22 individual voter, that there was no individual voter.

23 JUDGE COLLYER: Oh, that's right, and that there
24 wasn't a voter at all.

25 THE WITNESS: Oh, that, no, I didn't really mean

1 that. I meant that the voter that supposedly voted didn't
2 really cast the ballot.

3 JUDGE COLLYER: Didn't really cast that ballot, that
4 it was completed by someone else.

5 THE WITNESS: Yes.

6 JUDGE COLLYER: And the Texas Rangers elicited that
7 information during the investigation?

8 THE WITNESS: Yes, yes.

9 JUDGE COLLYER: Thank you.

10 Go ahead, sir.

11 BY MR. MCKENZIE:

12 Q. Have you finished describing the politiqueros and
13 politiqueras?

14 A. I believe so. It's as good a description as I could give.
15 They're vote harvesters. And it's a fairly common practice in
16 Bee County and throughout south Texas.

17 There's a currently a law suit in one of the counties that
18 borders mine, and it actually is the D.A. district for part of
19 one of my counties. It was filed just last week.

20 In that race, the district attorney's race was decided by
21 19 votes. And 18 of those votes came out of Brooks County from
22 people that were over 110 years old.

23 There's only 325 people in the whole nation that are over
24 110 years old. But in Brooks County there's a lawsuit filed
25 now by the district attorney to try to overturn that election

1 because of that amount. Brooks County happens to be one of the
2 counties that's been in the -- in the red that has over a
3 hundred percent registration.

4 JUDGE WILKINS: Just to be clear here. That lawsuit
5 involved mail-in votes or in-person votes, sir?

6 THE WITNESS: I don't know enough about it to say,
7 Judge, but I believe they were mail-in votes.

8 JUDGE WILKINS: All right. The testimony you've
9 given about the fraud that you prosecuted in that example, were
10 those mail-in votes or in-person votes?

11 THE WITNESS: Those were mail-in votes, Your Honor.

12 JUDGE WILKINS: All right. Can we talk about some
13 in-person voting fraud? If you've got some questions about
14 that?

15 MR. McKENZIE: Yes, Your Honor, I'm just laying the
16 foundation for his -- for the beliefs that he gathered as a
17 politician at the time as the county attorney as to what voters
18 thought of the system, what he believed voters thought of the
19 system as the county attorney.

20 JUDGE COLLYER: Right, but it's all based on mail
21 fraud. But you described as some large mail -- ballot mail
22 fraud involved with balloting; right?

23 MR. McKENZIE: Yes.

24 JUDGE COLLYER: Thank you.

25

1 BY MR. MCKENZIE:

2 Q. In your experience as a county attorney, do you think
3 that -- was it your experience that it was local elections or
4 national elections that were more affected by voter fraud?

5 A. I believe that the goal was for local elections, that's
6 where the contracts came out of, for example, the school board
7 election to build a brand-new school. That's where the jobs
8 came out for -- doling out jobs to your friends and maybe not
9 so close relatives because of the -- the laws were -- involving
10 nepotism, but it -- the power at least that I saw the effort
11 was to try to control the local elections.

12 Q. Why did you work hard as a county attorney to prosecute
13 voter fraud?

14 A. Because my citizens wanted me to. They were tired of
15 hearing how corrupt their system was, and they wanted somebody
16 to do something about it. And most of the crimes fell under my
17 jurisdiction as the county attorney.

18 Q. Based on your experience as the county attorney, is voter
19 fraud easy to prosecute?

20 A. No.

21 Q. Why not?

22 A. Well, for example, in the case of mail-in ballot fraud, it
23 normally involved a victim, what I would call a victim, someone
24 who had their vote essentially stolen or directed by someone
25 else, had to be over sixty-five years of age. Normally that

1 involved someone that was very reluctant to be involved in the
2 criminal justice system, perhaps not fluent in English,
3 unwilling participant.

4 But the cases I was able to prove, one, the individual pled
5 guilty. In the other I proved that -- that money actually
6 changed hands in the case of a vote, a mail-in vote, and I
7 proved that because there were outside witnesses around the
8 area that actually saw what happened to their loved one with
9 respect to that ballot.

10 Q. Did you sponsor any bills to safeguard the election system
11 during the 82nd legislative session that would have made voter
12 fraud easier to detect?

13 A. Several. Unfortunately, I was only able to get one done.
14 But I did sponsor, for example, a bill involving having cameras
15 in the polling place.

16 Q. What would that bill have accomplished?

17 A. Well, one of the things, it's much like a camera at a
18 bank. I mean, you could catch the perpetrator committing the
19 robbery. But another reason I think it's important it's much
20 like having a camera in a police car. It keeps the parties
21 honest.

22 And one of the problems that we have in south Texas is that
23 sometimes these elected officials or election administrators
24 aren't in cahoots with some of the stuff that's going on. We
25 have judges being thrown out of the polling place by the

1 primary judge. We have poll workers getting thrown out. I
2 thought that if we had some ability to watch what's going on we
3 could go back and trace and make things easier to investigate.

4 Q. Based on your experience of obtaining convictions for
5 voter fraud, do you believe convictions to be an accurate
6 measure of voter fraud in the State of Texas?

7 A. No.

8 Q. Why not?

9 A. Well, as I explained --

10 JUDGE COLLYER: Do you have an objection?

11 MR. FREEMAN: Yes, Your Honor.

12 JUDGE COLLYER: You need to speak up, you need to say
13 "objection" so the witness knows to stop talking.

14 MR. FREEMAN: Objection to the extent that the term
15 "voter fraud" is being used vaguely without a definition when
16 that definition is critical in this case.

17 JUDGE COLLYER: Okay, I understand. The Court
18 understands the objection, and you can continue. If you want
19 to be more clear, you can, and otherwise you can run the risk
20 of ambiguity.

21 MR. McKENZIE: Well, I think the witness in his
22 answer will --

23 JUDGE COLLYER: Believe me, it's your choice.

24 MR. McKENZIE: Okay. I'll repeat the question.

25

1 BY MR. MCKENZIE:

2 Q. So do you consider, based on your experience as a
3 prosecutor, in-person voter fraud convictions to be an accurate
4 measure of voter fraud in the state?

5 JUDGE COLLYER: And why don't you just answer "yes"
6 or "no," okay?

7 THE WITNESS: No, I don't.

8 BY MR. MCKENZIE:

9 Q. May I ask the follow-up question, why not?

10 A. How do you catch it? How do you catch someone coming in
11 using somebody else's certificate and leaving, that vote
12 counts. It cancels out somebody else's good vote. There's,
13 you know, from what I understand, the Attorney General has
14 obtained convictions. I'm surprised. I don't know how you'd
15 catch it.

16 Q. Okay.

17 JUDGE TATEL: Excuse me, are you talking about
18 mail-in vote or in-person vote?

19 THE WITNESS: Both. In mail-in ballot fraud, I'm
20 explaining how difficult it is --

21 JUDGE TATEL: How about in-person voting?

22 THE WITNESS: In-person voting, how do you catch it?
23 How do you catch someone coming in --

24 JUDGE TATEL: Are you aware of it?

25 THE WITNESS: I am aware that we have had

1 non-citizens voting in Bee County elections.

2 JUDGE COLLYER: And on what do you base that? This
3 is important.

4 THE WITNESS: Uh-huh.

5 JUDGE COLLYER: What information is that based on?

6 THE WITNESS: It's based on these non-citizens
7 consulting with me as an attorney.

8 JUDGE COLLYER: Say that they had voted?

9 THE WITNESS: Yes.

10 JUDGE WILKINS: So are you telling us privileged
11 information?

12 THE WITNESS: I don't think so. I mean, it's easy,
13 easily verifiable if -- I mean, it's public information in the
14 sense that there's a record of their vote.

15 JUDGE TATEL: Are these clients who come to you and
16 ask, they say they're not citizens, and they want to vote or do
17 they say they did vote?

18 MR. MORTARA: Object, object.

19 THE WITNESS: I think at that point I'd have to claim
20 the privilege.

21 MR. MORTARA: Your Honor, Your Honor, I'm very sorry,
22 but Mr. Aliseda has no obligation to --

23 JUDGE TATEL: That's fair.

24 JUDGE COLLYER: Well, he may not have an obligation,
25 but he's already said that he hasn't identified clients, he's

1 already said that he can testify to in-person voting fraud from
2 non-citizens because of things people have told him, and the
3 question was merely to get specificity as to what was told to
4 him, not to identify anybody.

5 JUDGE WILKINS: Are you moving to strike your
6 witness's testimony?

7 MR. MORTARA: No, Your Honor. My only interest is
8 when Your Honor has asked the witness a question, I think that
9 the witness frequently interprets as a court ordered answer,
10 and I wanted to advise that he should consult his own idea of
11 what the ethical rules that govern his behavior are --

12 JUDGE COLLYER: You don't need to speak to your
13 witness and advise him from there. The Court asked him a
14 question, it was a perfectly legitimate question given what
15 he'd already said.

16 MR. MORTARA: I understand, Your Honor.

17 JUDGE COLLYER: Thank you.

18 JUDGE TATEL: So what's the answer to the question?

19 THE WITNESS: Would you ask me again, Judge?

20 JUDGE TATEL: The question I asked was, do -- are you
21 aware of this because non-citizens came to you and said they
22 want to vote or are they people who told you as non-citizens
23 they had voted?

24 THE WITNESS: They had voted.

25 JUDGE TATEL: It's the latter.

1 THE WITNESS: Yes.

2 JUDGE TATEL: And why would they have told you that?

3 THE WITNESS: Well, they were concerned about the
4 legal implications for their --

5 JUDGE TATEL: I see.

6 THE WITNESS: -- residency status.

7 MR. McKENZIE: May I ask one foundational question
8 just to maybe clarify the record?

9 BY MR. McKENZIE:

10 Q. Are you a practicing attorney or were you a practicing
11 attorney in private practice at the time these people
12 approached you?

13 A. I've been a practicing attorney since I left -- well, even
14 in the United States Navy, I had to be a practicing attorney.
15 But I graduated in 1981 and received my law license in 1982.

16 I've had a private law practice for much of my entire legal
17 career except for the time that I was on the Board of Pardons
18 and Parole.

19 Q. Do you know voters who are registered to vote in two
20 different counties?

21 JUDGE COLLYER: Is there an objection?

22 MR. FREEMAN: There is, Your Honor. During Mr.
23 Aliseda's deposition he asserted an attorney/client privilege
24 with regard to individuals that he knew were registered to
25 vote. However, he did not disclose that they had told him they

1 had voted, thus the Government is prejudiced by his testimony,
2 and I move to strike.

3 MR. McKENZIE: With all respect, Your Honor, it was
4 in response to a question from the bench that he gave that
5 testimony, not because I elicited it from him.

6 JUDGE COLLYER: We're going to accept it for what
7 it's worth. Thank you for the objection. We'll note that the
8 testimony was not quite elicited in the same way during his
9 deposition.

10 Go ahead.

11 BY MR. McKENZIE:

12 Q. So apart from the communication you just described as to
13 the -- as to non-citizens voting, do you have a lot of
14 confidence based on your knowledge of District 35 that the
15 voter registration rolls only include eligible voters?

16 A. No.

17 Q. Why not?

18 A. Well, we have some counties that have well in excess of
19 the state average. At the time that I talked about voter ID in
20 front of the state legislature, I was using 2000 census
21 figures, which had, for example, how many people were
22 potentially eligible to vote, and then I had figures as to how
23 many were actually registered to vote, and voter activity in my
24 district had in excess of a hundred percent registration.

25 Looking at the map right now, McMullen County has an excess

1 of a hundred percent registration. Jim wells, which is the
2 home of the infamous box 13, has an excess of, I believe at the
3 time that I testified before the election -- not testified,
4 argued on behalf of voter ID in front of legislature, it had an
5 excess of 90 percent registration. Now it looks like it's in
6 the high eighties.

7 And the state average is only 74 percent or 75 percent. I
8 know for example the republican candidate for Congress is, and
9 we have two, but one of them is registered to vote in Travis
10 County and also registered to vote in Cameron County and so is
11 the husband.

12 MR. FREEMAN: Objection, Your Honor, lack of
13 foundation.

14 JUDGE COLLYER: Sustained.

15 BY MR. MCKENZIE:

16 Q. Do you believe that it is more difficult for racial
17 minorities to get ID's accepted under SB 14?

18 JUDGE COLLYER: This is not relevant. His beliefs
19 are not relevant. If you want to reform the question, you can.

20 BY MR. MCKENZIE:

21 Q. Did you hear any testimony as the member of the voter ID
22 Select Committee in the House that expressed a view that
23 minority voters would have a harder time obtaining IDs than
24 Anglo voters under SB 14?

25 A. I heard experts come in and testify to that fact. But I

1 heard not one individual come forward and say that they would
2 not be able to obtain an identification card or actually didn't
3 have an identification card.

4 Q. Do you personally know of any Hispanic citizens who lack
5 one of the ID's identified under SB 14?

6 A. No.

7 Q. Did any of your Hispanic constituents or did you
8 understand any of your Hispanic constituents to express support
9 for voter ID?

10 A. Yes.

11 Q. Is your district largely rural?

12 A. It is a rural district, yes.

13 Q. And you mentioned earlier in your testimony that you're a
14 slowly going broke rancher?

15 A. Yes.

16 Q. And how big is your ranch?

17 A. It's small by county standards, it's 720 acres.

18 Q. And is it your experience that residents in rural Texas
19 counties are accustomed to driving far distances?

20 A. The larger big city here is Beeville, for example Corpus
21 Christi and the edge of that city is 56 miles, that's where you
22 could get -- that's where the Social Security Administration
23 building is. People in rural Texas, as a way of life, are used
24 to driving long distances.

25 To do simple things like shopping, San Antonio is ninety

1 miles away, Victoria is 56 miles away, Laredo is 120 miles
2 away. I know these distances by heart because I've driven
3 them. And that's the case with almost every citizen that I
4 know in my district.

5 Q. Are there any programs in your district to help poor
6 residents travel long distances?

7 A. When I was a county judge I learned of a wonderful program
8 that was administered by the Council of Governments, and
9 apparently it's a statewide program. It's a pass through of
10 federal money for rural transportation.

11 And at the time my citizens would take advantage of this
12 program. They could make an appointment with what we called
13 the BCA, which was the Bee County Community Action Agency, and
14 they could get a ride to the doctor, to the mall, to anywhere,
15 like San Antonio, for a dollar.

16 Q. Will SB 14 stop all voter fraud?

17 A. No.

18 Q. What types of voter fraud will SB 14 stop?

19 A. I'm hoping it will have an impact on potential in-person
20 voter fraud. But, you know, the main reason that SB 14 is
21 important is because the citizens of Texas feel it's necessary.

22 MR. FREEMAN: Objection, Your Honor, the legislature
23 has asserted a legislative privilege, and thus his thoughts and
24 opinions have been denied to the Government, and he cannot
25 provide them to this court today.

1 MR. McKENZIE: May I respond?

2 JUDGE COLLYER: Yes.

3 MR. McKENZIE: This subject matter was extensively
4 questioned in his deposition. About what types of voter fraud,
5 I mean, we would be happy to provide the transcript.

6 JUDGE COLLYER: Yes, but the issue isn't voter fraud
7 now, the issue is main reason for SB 14. That was the
8 question, that was the answer.

9 MR. McKENZIE: And in his deposition there was -- we
10 were trying to shave a fine line. But we were trying to allow
11 testimony as to general legislative purpose --

12 JUDGE COLLYER: Yes.

13 MR. McKENZIE: -- and to draw a distinction between
14 individual legislative purpose.

15 JUDGE COLLYER: And so you're going to say that when
16 he says the main reason that the citizens of Texas wanted it is
17 that's a general legislative purpose?

18 MR. McKENZIE: Well, Your Honors will hear testimony
19 later that says that --

20 JUDGE COLLYER: I'm just asking you that question
21 right now because you just testified, and you have an objection
22 from Mr. Freeman. So you have to tell me now whether I should
23 admit that testimony.

24 MR. McKENZIE: Yes, I would say that speaks to
25 general legislative purpose, that the voters wanted it.

1 JUDGE COLLYER: That was the answer.

2 MR. McKENZIE: Okay.

3 JUDGE COLLYER: It speaks to general legislative
4 purpose, Mr. Freeman.

5 MR. FREEMAN: Thank you, Your Honor.

6 JUDGE COLLYER: You're welcome. Thank you.

7 MR. McKENZIE: So I'll just repeat the question again
8 so it's clear for the record.

9 JUDGE COLLYER: It's okay, we're past it. We got the
10 question, we got the answer. Keep moving. We are breaking in
11 six minutes. Will you be done in six minutes?

12 MR. McKENZIE: Oh, yeah, I'll be done.

13 JUDGE COLLYER: Oh, good.

14 BY MR. McKENZIE:

15 Q. As you sit here today, do you believe that all Texans are
16 required to have an ID on them at all times?

17 A. That question was asked at my deposition and after the
18 deposition I went and looked up the answer. Texas has a
19 statute, a criminal statute that's called failure to identify.
20 And what it requires is if you are lawfully arrested, you have
21 to give your --

22 JUDGE COLLYER: Wait, wait. What difference does
23 this make? If he didn't know about it at the time, it doesn't
24 really matter, does it? Isn't this irrelevant? It may not --
25 it may not be relevant to Texas, but it's irrelevant to this

1 man.

2 MR. McKENZIE: I think he slightly misspoke in his
3 deposition. He answered a question a little bit inaccurately,
4 and so I was trying to clarify his testimony.

5 JUDGE COLLYER: Ah. Okay. Is this an issue that any
6 of the defendants thinks is important whether or not Texas has
7 a law that requires you to carry an ID in order to be able to
8 identify yourself for in a *Terry* stop?

9 Nobody thinks it's that important, don't worry about it.

10 MR. McKENZIE: But if I think it's important can I
11 ask the question?

12 JUDGE COLLYER: Yeah, but he didn't know it then.
13 Okay. Yes, you can ask the question.

14 MR. McKENZIE: Okay.

15 JUDGE COLLYER: We got the question, the answer is
16 failure to stop. Keep going.

17 THE WITNESS: Failure to identify.

18 JUDGE COLLYER: To identify, forgive me.

19 THE WITNESS: Yes.

20 BY MR. McKENZIE:

21 Q. So, there's a criminal statute that prohibits failure to
22 identify?

23 A. Uh-huh.

24 Q. And did you have anything else to say in response to that
25 question?

1 A. It can also be invoked if you have been lawfully detained.

2 Q. Okay.

3 What do you understand the legislative purpose, the general
4 legislative purpose to be enacting as --

5 JUDGE COLLYER: We already had that answer.

6 MR. McKENZIE: Okay.

7 BY MR. McKENZIE:

8 Q. Was the legislative purpose in any part to decrease the
9 number of Hispanic voters who could effectively cast a ballot?

10 A. No.

11 Q. Was the legislative purpose in any part to decrease the
12 number of African-American voters who could effectively cast a
13 ballot?

14 A. No.

15 Q. Did you offer some remarks on the House floor in support
16 of SB 14?

17 A. Yes.

18 Q. Could briefly summarize those remarks?

19 A. I told the members of the legislature that I was a Mexican
20 immigrant. I held up a voter identification card from Mexico
21 showing that it had a photo ID, a biometric requirement.

22 And in addition, I told them about my service in the United
23 States Navy and how I didn't do that so that people that were
24 registered specifically Mickey Mouse that was registered by
25 Acorn could vote or that dead people could vote.

1 I also said that in my district I had counties that were
2 far in excess of the state average in voter registration, and
3 that the opportunity for fraud was there, and that I thought
4 this legislation would stop that fraud. But most importantly I
5 said that the people that are Americans in 2012, well, back
6 then it was 2011, expect to show an ID for just about
7 everything that they do of even semi-importance including
8 renting a movie and that the public expected us to pass this
9 legislation to give them confidence in the system.

10 Q. And you briefly alluded to this, but this is my last
11 question. I just want to make sure it's clear for the record.

12 Did the legislature receive any testimony from a member of
13 a racial minority group who claimed that he or she could not
14 get the ID's required by SB 14?

15 A. No.

16 MR. MCKENZIE: No further questions.

17 JUDGE COLLYER: Thank you, sir. We have maybe three
18 minutes left. Mr. Freeman, I'm going to give you a pass for
19 three minutes, okay?

20 MR. FREEMAN: Okay.

21 JUDGE COLLYER: Okay. That's very kind of you, sir.

22 All right, everybody, we're going to take a break. It's
23 now 12:30. We're going to be back at two, ready to go,
24 Mr. Freeman, at two; right? It is Mr. Freeman; right?

25 MR. FREEMAN: Yes, it is, Your Honor.

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JUDGE COLLYER: Okay, thank you.

(Luncheon recess @ 12:27 p.m.)

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CERTIFICATE

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the stenographic notes provided to me by the United States District Court, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

/s/Crystal M. Pilgrim, RPR

Date: July 10, 2012

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