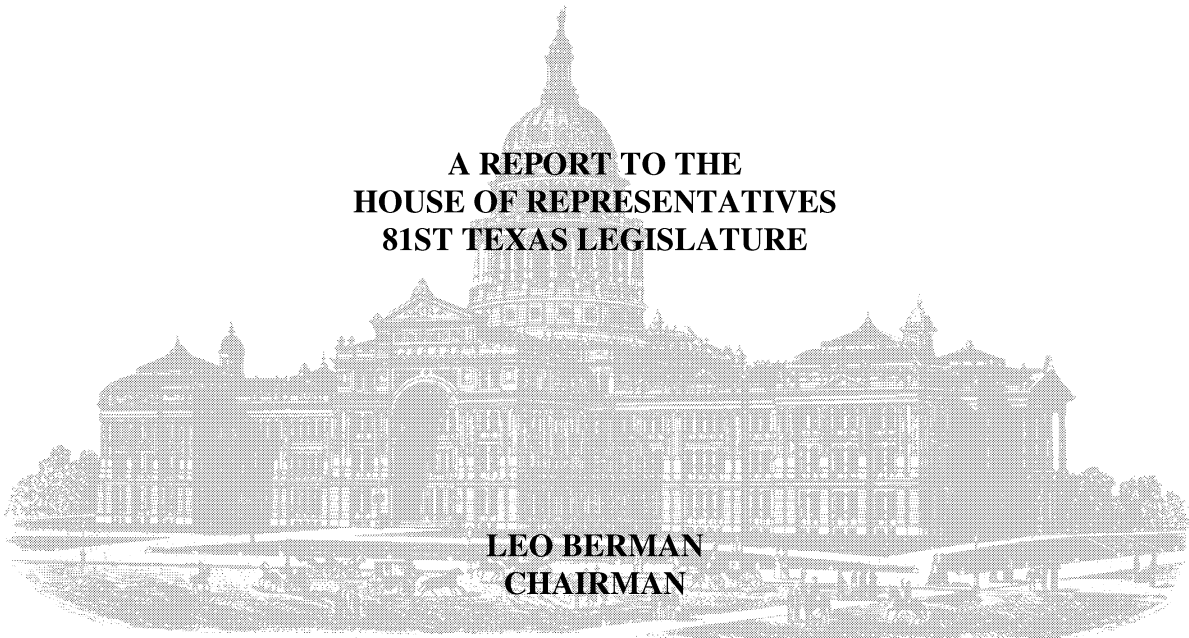

**HOUSE COMMITTEE ON ELECTIONS
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2008**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
81ST TEXAS LEGISLATURE**



**LEO BERMAN
CHAIRMAN**

E.B. Myers, Architect

**COMMITTEE CLERK
PATRICK DUDLEY**



Committee On
Elections

January 12, 2009

Leo Berman
Chairman

P.O. Box 2910
Austin, Texas 78768-2910

The Honorable Tom Craddick
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Elections of the Eightieth Legislature hereby submits its interim report including recommendations for consideration by the Eighty-First Legislature.

Respectfully submitted,

A handwritten signature in cursive script that reads "Leo Berman".

Leo Berman

A handwritten signature in cursive script that reads "Dwayne Bohac".

Dwayne Bohac

A handwritten signature in cursive script that reads "Kirk England".

Kirk England

A handwritten signature in cursive script that reads "Charlie Howard".

Charlie Howard

A handwritten signature in cursive script that reads "Lon Burnam".

Lon Burnam

A handwritten signature in cursive script that reads "Rafael Anchia".

Rafael Anchia

A handwritten signature in cursive script that reads "Joe Farias".

Joe Farias

Dwayne Bohac
Vice-Chairman

Members: Kirk England, Charlie Howard, Lon Burnam, Rafael Anchia, Joe Farias

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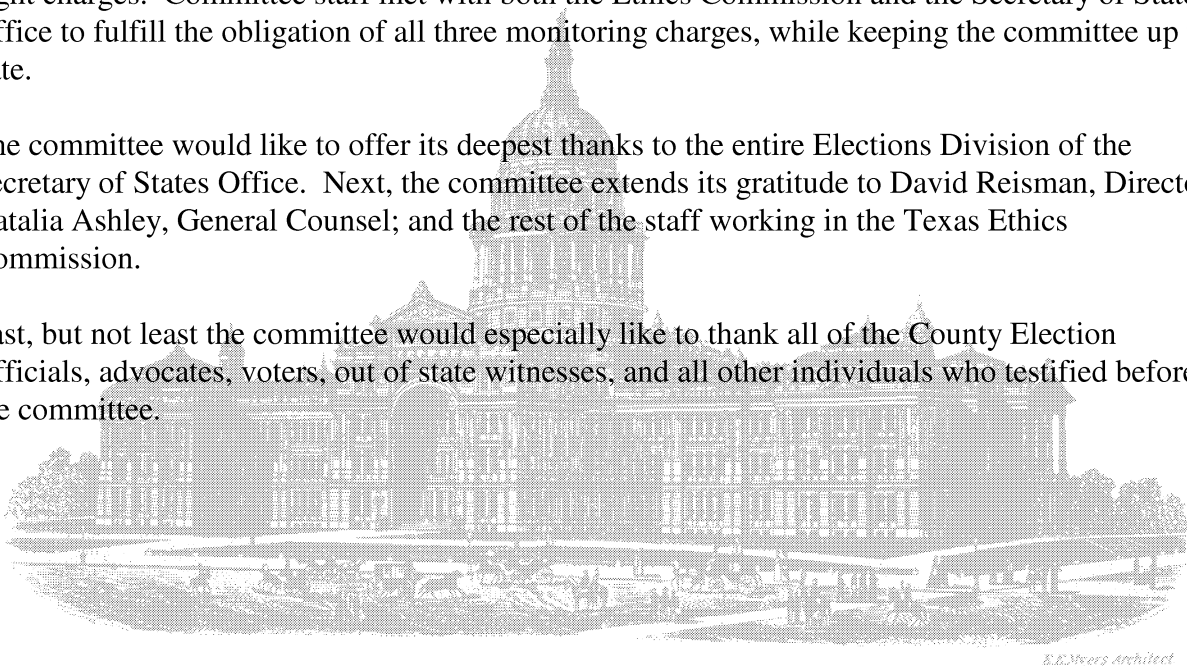
INTRODUCTION

At the start of the 80th regular legislative session, the honorable Tom Craddick, Speaker of the Texas House of Representatives, appointed seven members to the House Committee on Elections. The honorable Leo Berman was appointed chairman of the Committee. In addition to the chair, membership included: Dwayne Bohac, Vice-Chair, Kirk England, CBO, Charlie Howard, Lon Burnam, Rafael Anchia, and Joe Farias.

Following the completion of the 80th legislative session Speaker Craddick assigned the committee eight charges. The full committee met on four different occasions to hear five of the eight charges. Committee staff met with both the Ethics Commission and the Secretary of State's Office to fulfill the obligation of all three monitoring charges, while keeping the committee up to date.

The committee would like to offer its deepest thanks to the entire Elections Division of the Secretary of States Office. Next, the committee extends its gratitude to David Reisman, Director; Natalia Ashley, General Counsel; and the rest of the staff working in the Texas Ethics Commission.

Last, but not least the committee would especially like to thank all of the County Election Officials, advocates, voters, out of state witnesses, and all other individuals who testified before the committee.



S.D. Myers Architect

Charge No. 1

Study the general issue of electronic voting technology, including the issues of general benefits and risks, security and accuracy, paper trails, etc.

Background:

Where did the current voting process originate from? Many probably do not stop to think about the rich history encompassing today's voting methods, the technology used, or the everyday vocabulary society uses referencing elections. Many Americans take for granted the current process and idea of a secret ballot. It is generally assumed voting by secret ballot has existed since the birth of the United States. Despite what is thought, the way Americans have cast their ballots has changed many times throughout the course of 200 years.

Today there are questions and some skepticism among some Americans in regards to current voting methods. Electronic voting machines, within the last 6 years, have taken over at polling places. Questions regarding the security, accuracy, and reliability of these machines enter into the minds of concerned citizens across the country, but are Direct Recording Electronic voting machines (DRE's) really a new idea or are they a thing from the past? Looking at history, one finds these questions and concerns are not new and have been asked with the advent of each new voting method. This does not mean questions of concern have no validity, in fact quite the opposite. All concerns should be looked at carefully. However, before one delves into the problems of today and tomorrow, it is important to look into the past, only then can one have a true and balanced understanding of what may come and what needs to be altered.

In ancient Rome, citizens would cast white or black "ballottas" in an urn, meaning a vote of affirmation or refutation, respectively. The number of white or black "ballottas" would determine who the winner of an election was. The term "ballotta" is the root for the modern word "ballot" and is the Italian word for small ball. This is also where the term "blackballed" originated and today is used to describe rejection or loss of an election. This term having come from when a candidate received a majority of black "ballottas" in their urn, losing the race.¹

The first actual use of paper ballots to conduct an election appears to have been in 139 B.C., and the first use of paper ballots in what is now the United States was in 1629 to select a pastor for the Salem Church.² However, before the late 1800's there was no secret ballot, and campaigning at the polling place was a common and legal practice. Early paper ballots, if used by states, were no more than slips of paper provided by the voters themselves. As time went on, political parties or candidates provided preprinted ballots. These ballots made it very difficult for one to have the right to a private vote. In addition, it created difficulties in keeping voters from putting a number of ballots in the ballot box.

Parties themselves became adept at printing the ballots in such a way that any voter could easily distinguish the ballots from one party or the other. Still, not all states used paper ballots; Missouri, for instance, used the practice of voice voting until 1863. The voice vote provided only modest protection of a contest. There was no ballot box to stuff, however the lack of privacy meant voters were open to bribery and intimidation.³

Despite serious problems with the partisan form of voting, these paper ballots remained the rule until the late 1800's.⁴ It wasn't until 1888 that the Australian Secret Ballot (the ballot Americans know today) was brought to and used in the United States. The Australian Secret Ballot was designed in Victoria, Australia in response to the concern of voter fraud and voter privacy in Australia. In 1858 an election was held using a standardized secret ballot, printed at the expense of the Australian government, listing all candidates for office. These ballots were distributed to the voters at the polling place, one per voter.⁵

The Australian Secret Ballot was first used in New York and Massachusetts in 1888, but the move to the Australian Secret Ballot was slow in the United States. Texas and Connecticut moved by gradual reform from the partisan ballot and did not complete changes until 1905 and 1906. Missouri experimented with the Australian Secret Ballot, but went back to the partisan ballot until 1921. New Mexico did not fully adopt the new balloting method until 1927. North Carolina only required that all counties use the Australian ballot in 1929. By 1940, Delaware still used a mixed system where partisan ballots were still allowed outside the polling place, and while size, color, and typography were strictly regulated, South Carolina still used partisan ballots. The weakness easily found within the Australian ballot system was the subjective interpretation of each mark when ballots were counted. If administered properly, this ballot does make it difficult to cast multiple ballots, however, dishonest election officials can manipulate the counting process.⁶

Throughout the accession of the Australian Secret Ballot (and even before), innovators sought ways to perfect a fair, infallible, yet simple way to vote and to tally votes by machine. In fact, many of the more recent voting methods received an earlier start than some may think.

Direct Recording Election voting machines (DRE's) have an old history. The first proposals for electrical vote recording date back to the mid-1800s. Albert Henderson patented an electrochemical vote recorder for legislative roll-call votes (U.S. Patent 7,521) in 1850. Legislators could vote by holding down an aye or nay telegraph key on their desk and it would remotely print their name in either the aye or nay column on a piece of damp blotter paper kept as the official vote record. Thomas A. Edison refined this idea in his 1869 patent by adding electrochemical counters to count the votes. In 1898 Frank S. Wood proposed a push button paperless electrical voting machine for use in polling places (U.S. Patent 616,174). It wasn't until 1975 that the machine commercially known as the "Video Voter" was used in real elections in Streamwood and

Woodstock, Illinois.⁷

Lever machines were on the cutting edge of technology in the 1890's, and were considered the high tech solution for running an honest election as computer-tabulated punch cards would be in the 1960's. Although lever machines were first used in 1888, the Myers Automatic Booth lever machines were first used in 1892 in Lockport, New York. After this use, lever machines were slowly adopted throughout the country. By the 1930's essentially all of the nation's larger urban centers had adopted lever voting machines.⁸

Optical Scanners has its roots in standardized testing. The Type 805 Test Scoring Machine was introduced in 1937 by IBM and performed by sensing graphite pencil marks on paper by their electrical conductivity. These devices were the first generation of machine scored educational tests. The optical scan was developed as an alternative to the electrical sensing system and was first used in the mid-1950's. The first use of mark-sensed ballots was in 1962 in Kern City, California and was developed by the Norden Division of United Aircraft and the city of Los Angeles. Development of the 15,000 pound system began in 1958 and saw over a decade of use in Orange County California, and was also utilized in Oregon, Ohio, and North Carolina.⁹

There have been many changes since the days of partisan printed ballots and the "cutting edge" lever machines. With the advent of the Help America Vote Act (HAVA), electronic voting machines are utilized by U.S. citizens in every election. Currently, explicit state and federal standards have been established to preserve the secrecy of the ballot, ensure electronic voting machines operate safely, efficiently, and accurately and verify the methods are safe from fraudulent or unauthorized manipulation. Methods such as certification processes, examiners assessing voting machines, different levels of testing, required standards met by manufacturers, and standards and processes county governments must go through when machines are purchased and are set up at the polls are all established to ensure accurate counting of ballots cast. This does not mean these methods are flawless or that they can not be manipulated. There are a number of citizens that distrust the use of electronic voting. Individual concerns lie with the lack of a voter verified paper trail, the possibilities of an internal or external hack which could be executed on one or multiple machines, and the lack of accuracy the machines might have.

Some believe a Voter Verified Paper Audit Trail (VVPAT) is the solution to creating confidence and more secure elections. However, recently it has been discovered the VVPAT may not be the ultimate solution, but potentially will be a waste of government dollars and offers a false sense of security.

Charge No. 1 covers the general aspects of electronic voting. In addition, the charge looks in depth at the use of VVPATs and determines whether or not these forms of paper trails are a good solution for the State of Texas. Once these issues have been covered within the report, the committee will make recommendations to the 81st Legislature on what it believes the best course of action should be.

Security, Accuracy, Benefits and Risks:

History has shown with every voting method comes risks of fraudulent behavior. Electronic voting technology is no different. Are these risks mitigated by the security procedures and certification processes established by federal and state governments? The committee took testimony from the United States Election Assistance Commission (EAC), the Texas Secretary of State's Office (SOS), manufacturers, advocacy groups, computer scientists, and county election officials who use electronic voting technology. The testimony was taken in order to learn exactly how an electronic voting machine is certified, the security procedures and measures taken, and the benefits and risks encompassing the technology.

Matthew Masterson, Testing Certification Analyst from the EAC, testified on the current federal certification program developed and being evaluated. The Help America Vote Act (HAVA) established the EAC and gave it three tasks. The first was the responsibility to distribute and manage \$3 billion in funds set aside for states to purchase voting equipment. The second task was to create and adopt the Voluntary Voting System Guidelines (VVSG) used by non-federal independent testing authorities in assessing and certifying voting systems. Finally, the commission was to accredit voting system test labs and to certify and decertify voting equipment. This was the first time the federal government has been responsible for certifying, decertifying, and testing voting equipment. Before the EAC was commissioned with this responsibility, the National Association of State Election Directors (NASSED), a non-profit organization made up of State Election Directors across the United States, certified and decertified voting equipment. Of significance to note, state participation in the EAC program is voluntary, so states may use as little or as much of the program as deemed necessary.

Masterson said the EAC is currently in the process of creating a new set of VVSG, which are being modified to be more user friendly, accommodate the next generation of voting systems, to promote innovation and is a total rewrite of the previous 2005 VVSG. In 2007, the EAC was commissioned to create a testing and certification program independently verifying voting systems in compliance with the necessary requirements established in the VVSGs. Manufacturers became active in complying with HAVA once test labs were accredited under the EAC and submitted voting systems to be tested under the new certification process.

Currently, there are 11 manufacturers registered with the EAC program and 9 machines have been submitted for testing; the first system was submitted in February 2007. To date, as of this hearing, none have been certified. When questioned about the validity of the voting machine certifications in use today, Masterson gave detailed information to the committee. There are different regulations within each state determining which machines are certified to be used. Masterson assured the committee, voting machines currently in use have been certified by NASSED.

The EAC does have a quality assurance program in its guidelines, so a state will know individual voting machines have been certified under the program. Additionally, the commission provides a quality monitoring program allowing for investigations on voting equipment when a member of the public brings evidence against a voting system's validity. However, since there have not been any EAC certified voting machines, there have been no investigations. Because this is a voluntary program, the EAC can only regulate those machines registered. Consequently, if a member of the public provides the EAC with evidence of a possible non compliant machine, the commission does not have jurisdiction to investigate said allegations if the machine in question is not registered with the program.

There were questions among committee members of when the first voting machine would be EAC certified. Masterson assured the committee the commission is actively working with vendors and testing labs to get a system out in an efficient manner; however the EAC was not going to compromise the quality of the testing for the need of expediency.

There have been five voting system testing labs accredited by the EAC. These labs are initially reviewed by the National Institute of Standards and Technology (NIST) through its National Voluntary Laboratory Accreditation Program (NVLAP) and then provides a recommendation to the EAC on laboratory accreditation. To date Wyle Laboratories, Info Guard Labs, iBeta Quality Assurance, Systest Labs, and the newest addition of accredited labs CIBER, Inc. have all been successfully accredited voting system laboratories under the commission's Voting System Certification and Testing program.¹⁰

Systest Labs has been providing Independent Software Test Engineering and Quality Assurance since 1996 and has its roots in testing and verification of technology rich complex systems developed by the Department of Defense. It was one of the first Companies accredited by NIST under NVLAP and sponsored by the EAC as a Voting System Test Lab (VSTL). Before it was accredited by the EAC, Systest Labs was accredited by NASED and is currently engaged in or has numerous consulting and certification projects directly for Secretaries of States, Attorney Generals, and/or County Election Directors and Officials, which are separate from work performed for the EAC. Representatives from Systest Labs testified before the committee regarding the process manufacturers must go through to receive certification.

Many tasks go into electronic voting system risk reduction. Each project starts by determining the scope of the project or how much testing is needed to qualify, certify, or accept a voting machine. The manufacturer seeking certification submits a Total Data Package (TDA) including detailed documentation, source codes, and hardware specifications of the products being tested. After a review of completeness, detailed test planning is performed. A Physical Configuration Audit (PCA) is performed on the product to test for any discrepancies between documentation, source codes, physical configuration, and the manufacture's prior testing results. All discrepancies are reported to the manufacturers for resolution and reexamination.

All hardware, software, and firmware are tested during the Functional Configuration Audit in environmental chambers and test labs to make sure all standards are met. This is followed by security testing directed at the effectiveness of physical and electronic controls employed to protect critical voting system elements. Penetration vulnerabilities of network and internal origin are also tested and verified.

The committee was informed the thorough testing performed resulted in identified discrepancies within most voting systems. These discrepancies are sent to the manufacturers to be analyzed, corrected, and retested. As test programs progress additional discrepancies will continue to be found only to be fixed and retested for the benefit of the public. The representatives at Systest believe this is a solid test program helping reduce risk and improve product security and accuracy. These tests are taken seriously with the manufacturers. As Peter Lichtenheld of Hart Intercivic said, "It is like taking a test; you don't take the test until you are prepared. Our machines go through internal testing then to an independent test lab, and then it goes on for the real test for review before the Federal process. We want them to work."

*The committee would like to note that on October 29, 2008 the EAC notified Systest Laboratories Inc. with intent to suspend its accreditation as an EAC certified test lab. This decision was based on an earlier suspension of accreditation by NIST. The suspension came after an on site review conducted by NVLAP with EAC and NIST representatives present discovered non-conformities with accreditation regulations. Non-conformities included failure to create and validate test methods, improper documentation of testing and unqualified personnel. The EAC requires that all test labs must hold a valid accreditation from NIST/NVLAP.¹¹

Systest responded to the EAC within its three day deadline to refute the NIST suspension. A letter to the EAC from Systest Labs. Inc. Vice-President of Compliance Services, Mark Phillips, indicated that all staff conducting voting system testing are degreed and experienced testing professionals who have passed Systest's audited and approved internal training and testing curriculum. Systest believed during the stressful conditions imposed by close observation, which included questioning and interviewing by up to eight NVLAP representatives, some of their staff may have not provided complete responses but does not believe this constitutes a reason to suspend accreditation.

In regards to the validation of testing methods Systest Labs argued while NIST required observation of actual testing of a voting system, the only testing available that day were initial trial tests being run for the first time. Due to the newness of these tests faults were uncovered. Systest agreed with recommendations given by NIST and submitted a package to NVLAP outlining the procedural changes Systest plans to make in response to the recommendations. Discussion revealed the requirements for testing methods and readiness testing have been interpreted differently even between NVLAP members. Systest also asked if there was a more effective or clearer test method documentation and validation process. NVLAP representatives' response to this question was other labs have had issues in this area as well. Based on their constructive response and ability to rapidly

remedy this area, Systest believes suspension of their accreditation was not warranted.

Systest Laboratories Inc. was suspended the day Mark Phillip's letter was received by the EAC and is not allowed to perform any testing on voting machines for the EAC until the situation is remedied. Under EAC rule Systest Labs. may request an opportunity to cure its non-compliance issues within 20 days of suspension. Committee staff spoke with Vice President of Compliance Services, Mark Phillips, on November 12, 2008 to receive updated information on the subject. Mr. Phillips assured the committee this was a minor set back. He stated Systest is currently executing a cure plan in concert with NVLAP and will rectify all identified areas by Dec 8th. The next step will be for NIST and the EAC to verify that they have actually made these changes. Systest Labs is asking they do this not later than Dec 15th.*

Once these systems are certified federally they must then become certified through the State of Texas before being put on the market. The Secretary of State (SOS) requires new systems and modifications to previously-certified systems to be qualified by the EAC with the 2002 version of the VVSG or newer. The Texas Election Code requires all voting systems be approved by the SOS before any electronic voting machine is used in any election. Texas uses three major manufacturers to supply its voting needs: Premier Election Solutions (formerly Diebold), Elections Systems and Software (ES&S), and Austin based Hart InterCivic. As heard from the manufactures Hart Intercivic serves 104 counties within the state with a total of 30,000 pieces of voting equipment, ES&S does business with 183 election entities including 146 county jurisdictions for a total of 11,000 pieces of voting equipment, while Premier services 7 counties. All of these machines must not only go through the federal process of certification, but the state process of certification in order to make it to any polling place.

Former General Counsel to the SOS, Jay Dyer, explained to the committee the process the SOS uses to certify these electronic voting machines. He also informed the committee on the follow up procedures in place keeping these machines secure once they are deployed. Before a machine is even considered by the SOS it must demonstrate it can essentially pass the tests of two outside entities, independent testing authorities, and the EAC guidelines. If it does not meet the seals of approval by any one of these entities it does not come through. Once the machines are received by the SOS they are reviewed by six examiners, three appointed by the Attorney General's office and three appointed by the SOS. These examiners review the systems to make sure they comply with the statutory requirements set out in Chapter 122 of the Texas Election Code.

After the review each examiner files a report with recommendations on whether or not a system should be certified, which may be publically viewed on the SOS website. Once the reports are submitted the SOS holds public hearings and takes public testimony. (Each testing date and public hearing date may also be accessed by the public through the SOS website). After all information is considered the SOS will make a determination of whether or not the system should be certified. What will occasionally happen is voting machines will be conditionally certified meaning if a concern has been raised with a

machine, the SOS will only certify it if the concerns brought up are resolved. If those concerns have not been resolved then that machine is not certified.

Mr. Dyer pointed out to the committee after a machine is certified it only means it has met statutory requirements. What it does not mean is the voting machine standing alone has a 0% chance of having any kind of problem under any circumstances. The security of the voting method is not in the machine alone, but in the entire process making up the voting method.

What is done to minimize those risks of having a machine's security breached has a multifaceted answer the SOS believes is training and awareness. The SOS spends significant amounts of energy in training county election officials the ins and outs of these voting systems and assists them with security plans. Staff within the SOS is constantly thinking of "what if" scenarios that could happen within an election, so those possible "what-ifs" may be mitigated before they occur.

The SOS has developed best practices or a series of advisories for all county election officials in regards to the security procedures running an election. Mr. Dyer made an important observation, "To say that you have an SOS certified system and I don't have to be careful or worry about any other process, I think would reveal a serious level of misguidance on what it took to run a safe and secure election. To say we can completely eliminate the risks with this medium by using another medium would also be misguided, because whatever medium you are using you have to surround it with processes, seals, tapes, security, whatever, because you are dealing with a human endeavor. You minimize the risks of human error whether deliberate or accidental."

It was the view of the SOS if the right protocols, structure, and training are in place; the electronic voting method is more accurate because it does remove the human factor in the counting process. The SOS did warn the committee that if or when the legislature decides to lay out standards for electronic voting machines, that it is mindful of current processes at the time and is careful not to adopt a standard applying to a machine not yet created.

Throughout the hearing the issue of the time it takes to certify these machines was brought up, not only by manufacturers, but by election officials as well. David Beirne, Executive Director of Election Technology Council (ETC), spoke on this issue. The ETC is a 501 (c) 6 trade company whose membership represents over 90% of the voting technology in the market place today. His testimony illustrated one example of the challenges manufacturers must deal with. He said earlier in the United States Session, Congress was proposing a bill which would have legislated technology not even in existence at the time and would not have been for the anticipated deadline. The entire life cycle for new development of an electronic voting system is 54 months. New product certification lasts alone up to 12 months, with an additional period for state certification.

Mr. Beirne stated the federal certification process still has not yielded a single

certification, but has increased cost by 300%. The challenge with certification is it directly affects the industry's ability to respond quickly to the growing and changing customer demands. Many increased costs regarding the certification process affects the entire industry. Manufacturers must recoup certification costs in some way, and more than likely do so at a county level. Dallas County's manufacturer took one and a half years to become certified for a version of the software which is now two versions old. Bruce Sherbet (Dallas County Elections Administrator) believed the counties could receive newer and better software if the certification process was completed quicker.

Once a machine is certified it is up to the counties to decide which manufactures they would like to purchase from and which machines they wish to purchase. After those machines are purchased another level of security procedures are put in effect. Dana Debeauvoir (Travis County Clerk) expressed her sincerity when she said to the committee, "Virtually all of us take the viewpoint that the only way we can sleep at night and say to our voters yes I'm certain that your vote is being counted correctly and say that to them and mean it is if you do extensive testing." Dana took the committee through the security process counties implement when handling the machines.

Before elections are even considered and machines are bought, all county election officials must perform acceptance testing from manufactures before a county claims a product. Acceptance testing is done so counties may verify the product they are receiving is legitimate and all components within that system are performing to their required specifications. This testing is not done just once when machines are bought, but also when upgrades are in progress. All testing information is then retained on record.

After purchasing the machines every county goes through security procedures in order to properly carry out an election. The basic testing all counties are required to perform under state law is Logic and Accuracy Testing (L&A testing). This form of testing is done manually and is recommended to be done as much as possible. If a mistake is made during L&A testing the county must start over and repeat the process.

After all candidates are set up in the proper precincts etc. and are in a spread sheet a known stack of data is entered into the machines covering all possibilities of blank votes, over votes, under votes etc. Once the machine goes through all of the data, the results taken from the machine is compared to the data entered. This testing verifies all candidates are in the proper place on the ballots and everything is in the correct precinct.

The second kind of testing recommended, but not required is hash code testing. This test compares programs being used by the county to those programs on file with the SOS and at the NIST library. Hash code testing assures the software county election officials are using is the correct software and assures it has had nothing added or subtracted from the program.

A third form of testing catching on is parallel testing. This form of testing is more expensive, time consuming, and tedious so it is not done within all counties. Parallel

testing deceives the voting system into thinking it is in a real voting environment and not a test environment. Ms. Debeauvoir explained if anything has been planted in a machine and has not been found by previous testing methods it will show up during this test.

To perform parallel monitoring, machines are pulled out randomly from a precinct and are set up in a secure room, preferably under surveillance. Throughout the day, as done in Travis County, staff is asked to enter "votes" from a test deck into the system as if it were Election Day. At the end of the day the results are tabulated and taken from the machine and then compared with the test deck. This technique allows the machines to be used as if it were Election Day uncovering any possible "hacks" that could have been imbedded into the software. This not only proves the correct software is being used, but proves the voting machine has performed as it would have in the field.

Currently L&A testing is the only required testing in the State of Texas, while both hash code testing and parallel testing are only recommended. What can be done in Travis or Dallas County may not be able to be done in smaller counties due to lack of resources. Ms. Debeauvoir said all test processes are necessary and if all are done properly she believes the confidence level in machines could be 95%. Bruce Sherbet, with the support of other county officials, believed it would be wise when talking about parallel testing and hash code testing that the state had a standardized system in place for all counties, and finds it troubling Dallas County might be doing it different than Tarrant County, who may be doing it differently than Bexar. Standardizing the system would benefit the counties as well as the state so when advocacy groups ask what is being done, the answer among the counties will be the same. Sharon Rowe, of Collin County, explained she would like to go to parallel testing, but said party chairs in her county have told her they are not interested in parallel testing and do not believe it is necessary.

Testing is not the only form of security procedures done on a county level. Ms. Debeauvoir gave the committee a handout on the security procedures Travis County goes through. New, enhanced, or continued security practices in Travis County are:

- Provide public invitation to attend all programming and testing activities
- Maintain written procedures and initialed tracking sheets
- Maintain independence from vendors
- Recruit, screen, and train skilled and trusted employees
- Coordinate emergency management plans with other relevant agencies
- Use Sheriff and Constable Officers to secure early voting electronic ballot boxes
- Improve security for the building where election activities occur
- Implement employee procedures that lower risk
- Conduct extensive pre-purchase testing of new equipment or software
- Provide continuous functionality testing of equipment
- Conduct Hash Code Testing on software
- Perform High Volume Testing of ballot programming
- Perform Parallel Testing
- Conduct Early Voting and Election Day audits by matching counts of voters by

location as reported by the electronic voting system to the number of names on signature rosters

- Conduct post-election verification using the three redundant electronic sources, paper results printed from the electronic ballot boxes, and precinct-by-precinct election results

All election officials agreed all voting systems have risks whether someone is voting by machine or by paper ballot and these systems are parts of a larger process. The security measures are not just in one step, but in many steps. It was pointed out by the election officials with the passing of time and with the experience and knowledge they have gained the less dependent on the manufactures they have become. These officials take extra precautions they feel are necessary so elections may be run in a safe and secure manner.

County election officials have developed risk assessment models or lists of real risk scenarios threatening elections and then develop lists of ways to prevent, mitigate, or recover from those risks. Counties through out the state go to extra lengths to protect their elections. Galveston County conducts a minimum of three L&A tests and invites the public to attend these tests. They also do not use a vendor to program ballots. Even printing and tabulating ballots are all done within Galveston County.

According to Steve Raborn (Tarrant County Election Administrator) Tarrant County is taking more and more security precautions on their own accord. They have added physical security in their own buildings, controlling access, increasing the changing of custody procedures, and have improved the inventory system so they can tell at any moment where a machine is located. Sharon Rowe, Collin County Election Administrator, testified that all coding is done in house and everything is managed on a county level. She said Collin County has security logs on everyone who enters the polling place who is not a voter.

Another security measure in place through the SOS is the mandatory partial recount done after each major election. As Elizabeth Hanshaw-Winn, the Director of the SOS Elections Legal Division stated the SOS does not reveal to the precincts or counties who will be chosen to be audited, leaving the process very secretive. This audit has been done for a number of years and was put in place during the eighties. The SOS uses the paper audit trails all machines are required to have under HAVA. HAVA prescribes in code all systems being used in an election must have a permanent paper record for the purpose of a manual audit.¹²

Dana Debeauvoir proposed a system akin to the one implemented in Georgia that would support all counties and allow, among many things, all methods of testing within every county, small and large. Individually, it is almost impossible to implement all procedures and tests because of funding, but through a Texas Election Center she believes it could be accomplished. The Election Center would be a clearing house for all election officials. It would perform research, train staff and volunteers, train and employ trouble shooters for

voting equipment, assist with ballot design, provide parallel testing (along with other forms of testing), and address many other issues. For example, if Texas wanted to parallel test voting equipment across the state, they would have the opportunity to do so through the center. This center could be housed or run by one of Texas's own universities and would be funded by the state.

Manufactures testifying before the committee agreed with county election officials. David Beirne of ETC stressed the integrity of all elections comes down to a balance of prevention versus detection. The ETC, in an effort to assist election officials with providing security measures released "Safe Guarding the Vote" a document outlining the various procedures that can be incorporated by state and local election officials for the 2008 Election. Mr. Beirne referred back to a statement made in a report done by the Government Accountability Office on a contested United States Congressional Election in Sarasota County Florida; election integrity comes down to a system of people, process, and technology. Mr. Beirne and the manufactures he represents believe the Texas Legislature and the SOS should use these three components as a guide when assessing the election integrity and reliability of voting technology in Texas.

What happens, Mr. Beirne pointed out, is the complex mixture of personnel, procedures, and technology can result in straight forward human errors and when this happens unfortunately the media inaccurately and automatically attributes these errors to technology.

Edward Perez is the Manager of Election Services for Hart InterCivic. He has worked in the public sector for six years as a professor, worked in the Texas House, has been a trainer in the field, has been in the trenches, and has personal knowledge of the dedication that counties put into their elections. Mr. Perez testified that some trouble the industry does have is putting their hands around standards and being able to get through a certification process that is not so costly. The issue is developing a product which does not price them out of the market and can still move fast enough the machines can actually serve their customers.

An issue vendors must overcome is the mosaic of standards in place across the nation, because every state's standards are different. The important issue which must be weighed by the vendors according to Mr. Perez is security, usability and cost. This combination makes it very complex to fulfill. A vendor does not want to make a machine so secure it is unusable or unaffordable, but they do not want to make a machine so affordable and so usable it is completely unsecure. Vendors want to develop a product hitting all three marks: security, usability, and affordability. Mr. Perez stated, "There is a valid and significant citizen concern about the vote, which absolutely needs to be addressed. The absence of information means the absence of innovation and serving our customers, and addressing those concerns is also hampered because we don't have clear standards."

Hart Intercivic representatives shared with the committee the issues they see with their customers during election events and described the most common issues they see with

voting systems today along with solutions to these issues.

These issues are:

- Public perception that the process is not transparent - This can be resolved by opening up our elections offices and their processes to the public. Let those who are interested watch as ballots are laid out, equipment is prepared, and votes are counted. Hart can also do things, as a voting system provider, to be more transparent and we are working on those solutions. Currently, we routinely escrow our voting system code with State and Federal authorities, so we do have a form of disclosed source code in place.
- Issuing an incorrect ballot style to a voter – This human error has been the bane of elections for many years, especially in complex jurisdictions, no matter what the voting method. To avoid this error in Travis County, for example, poll workers repeat the precinct number as displayed on the voter record and again on the Access Code when handing the Access Code to the voter; Harris County poll workers write the precinct number on a slip of paper and compare it to the printed Access Code; during Early Voting Tarrant and Montgomery counties use an electronic poll book to print the precinct number to a bar code and scan the bar code to generate the voter Access Code (thus avoiding human error).
- Inadequate electrical supply at a polling place in combination with weak batteries or no batteries installed – Jurisdictions should test electrical outlets when qualifying polling places for use and use battery back up and/or Uninterruptable Power Supplies wherever possible.
- User training-related errors – Often jurisdiction staffs are too busy and/or have too little county funding to pay for new employee or review training. Because they don't run elections everyday, the forgetfulness curve kicks in. Of course, the same is true of poll workers. Poll worker training needs to be hands-on, taught by staff members who know what they are talking about and reinforced with practice as well as clear and consistent documentation. Poll workers have a LOT of responsibilities on Election Day, and they deserve excellent hands-on training and support.

After security the next issue most commonly brought up is the accuracy and trustworthiness of voting equipment. Are they accurate? Can the public trust the equipment? Testimony from all county election officials assured the committee they would not be able to stand behind the machines they use if they did not think they were accurate, secure, and trustworthy.

Steve Raborn believes the systems Tarrant County offers are secure, trustworthy and accurate and thinks the 41% turnout rate during the 2008 Primary Election speaks for itself. Bruce Sherbet has been an Election Administrator for 21 years. In that time he has

seen Dallas go from lever machine to punch card, to pc based punch card, and then in 1998 to optical scan with punch screen. He believes through electronic voting the state has taken 3, 4, or 5 steps forward and the State of Texas is much better off with the technology. He added this did not mean the technology did not need to be improved upon, but it is better than what Texas has had in the past. Mr. Sherbet stated the most inaccurate form of counting method he has seen is the hand counted paper ballot.

Joy Streater (Comal County Clerk) spoke on the accuracy of electronic voting machines vs. paper ballots, "If you give me 999 votes being counted out to 9 people making hash marks, I will give you 999 different tallies maybe 4 or 5 times". As Ms. Streater pointed out once poll workers arrive at 4:00 a.m. at the polling place, work through out the day, by nine p.m. they are brain dead. This human element is what county election officials agreed to be what causes the most errors in elections.

In fact what concerns Steve Raborn is the call to move to hand counted paper ballots. Mr. Raborn, who has had 25 years of experience, can not think of a method that has the potential for causing problems than the hand counted paper ballot. The error rate he believes would exceed what is found in electronic voting. Allison Harbison (Shelby County Clerk) stated she has had a recount nearly each election since HAVA and none of them have ever changed the outcome of a race. Galveston County Election Coordinator, Douglas Godinich, believed with the 36 or 50 different ballot styles being used it would not be possible to go back to paper. The simple logistics of conducting elections in this day and age he explained would not make it possible. He also informed the committee he does not believe Galveston County would have been able to produce the kind of turnout if not for the machines they use in conjunction with the paper ballots.

Other benefits shared by county election officials were the efficiency of counting ballots and being able to provide easier access to the disabled population. More access for the disabled was an important benefit brought up during the hearing. Bryson Smith, who represents Adaptive Texas and is disabled himself, shared his testimony with the committee. He believes with the advent of the DRE he has been able to vote much easier and more privately as compared to the past. Machines, he believes, has helped voter turn out within the disabled community.

Dennis Borel, the Executive Director of the Coalition of Texans with Disabilities (CTD), agrees with Bryson. Since HAVA was adopted the CTD has been working with the SOS, presenting at election law seminars and conducting surveys to the disabled. As Mr. Borel pointed out Texas has a history of the disabled community not participating in its elections and should focus on the disabled. He stated in 2003 there were 3.2 million disabled people in the State of Texas. Not all required assessable voting machines, but with the voting age getting older the number is only going to rise. Both Mr. Smith and Mr. Borel agreed the use of voting machines has given the disabled a much more private voting experience than what was available before.

Mr. Borel was part of a focus group dealing with the disabled communities' involvement

with elections and said the question amongst the disabled that got the most attention was: How much do you value the private ballot? A secret ballot was very important to all who answered. Another important question asked was whether or not the machines they voted on were accessible. Of the Texans that responded 87% with blindness said the machines were easier than prior methods. Eighty-three percent who were mobility impaired and 86% who were hearing impaired said the machines were more accessible than before.

When asked whether or not the disabled community believed the voting machines were secure, Mr. Borel cited a study done by the American Association of People with Disabilities. In this study they surveyed the disabled community on what their expressed confidence was on security and accuracy of the different types of voting methods. Sixty seven percent had confidence in the DREs, 64 % had confidence in precinct county scan, 36 % expressed confidence in the vote by mail method, and 28 % had confidence in internet voting.

He stated he did not doubt there was some "technical evolution" that needed to happen, but the fact was machines were a better process than what was in place before. The number one complaint Mr. Borel presented to the committee from the disabled community was poll worker training and explained there needed to be more emphasis on demonstration accessibility features or avoiding setting up machines in difficult areas for the disabled to get to.

While the testimony among our own county election officials commended the use of DREs some states have gone to extra lengths to make sure their certified machines are in fact what they say they are. There have been reexaminations of state and federally certified voting systems across the United States which has led to decertification and questions open to the actual security of DREs. California is one of the most well known instances of a reexamination of voting machines.

The California Secretary of State contracted with the University of California to conduct a top to bottom review of all the voting machines being used in California. The goal of the review was to test the security of the three electronic voting systems, two of which are used in Texas. Matt Bishop a University of California at Davis computer science professor led a team on assessing vulnerabilities and said he was surprised how easy it was for his team to break into the voting machines and added that if given more time they would have been able to find more problems.

Each "red team" was to try to compromise the accuracy, security, and integrity of the voting systems with out making assumptions about compensating controls or procedural mitigation measures that vendors, the Secretary of State, or individual counties may have adopted. Under those conditions each "red team" was able to breach the security of all three systems.¹³ The summary states when developing scenarios "red teams" made no assumptions about constraints on the attackers. As taken from the review, "The results of the study must be evaluated in light of the context in which these election systems are used. This emphasizes a key point often overlooked in the discussion of the benefits and

drawbacks of electronic voting systems: those systems are part of a process, the election process; and the key question is whether the election process taken as a whole, meets the requirements of an election as defined by the body politic."¹⁴

The reviewers stressed no computer system or computer based system are made completely secure and the managers of these information technology systems must develop sufficient controls within the process in order for the system to meet specific standards and requirements. An information technology security plan they believed included three issues of interest in the field of electronic voting systems: physical security, security training of staff, and contingency planning. It was further pointed out any security system when dealing with technology traditionally relies on layers of mechanisms, not just one layer.¹⁵

Red teams of the Top to Bottom study in California did mention issues regarding the capability of the review. One was lack of time, they believed if they had more time they would have been able to uncover several more vulnerabilities, but because of time constraints teams had to discontinue studies for the purpose of preparing reports. Another issue was the lack of information. Some documents were submitted too late to be of any value to the research.¹⁶

Red teams identified several vulnerabilities and presented several scenarios' in which these weaknesses could be exploited to affect the correct recording, reporting, and tallying of votes. The study pointed out vendors should assume the components of their machines will be used in un-trusted environments and should therefore place mechanisms within the machines withstanding determined attacks.¹⁷

All manufacturers testifying before the committee rebutted the reviews by agreeing even though the reviews have varied they have lacked the important components always considered during federal and state certification testing, i.e. election equipment and technology designed to be used, not in isolation, but in an environment of people and processes.

Representatives from Premier informed the committee while they may not have agreed with the methods used in these different reviews, they do take them seriously and are always working on developing new ways to increase the reliability, functionality, and security of their voting systems. Again, because of the time it takes to get certified manufactures believe they are unable to provide the new innovations to the county election officials in an up to date manner. The problem being security enhancements designed for new systems are still in the certification process. They have, however, included additional layers of defense in the new machines and believe if states can be patient they will benefit from the extensive testing being done.

While these reviews may provide important information about system architecture in a way that casts light on questions of security, it should not be mistaken as a realistic environment. This realistic environment is filled with election professionals, safeguarded

equipment, pass words and physical barriers which inhibit corruption. David Beirne, with ETC, said since the reviews neglected to include current election administration security guidelines and the machines were tested within an operational vacuum they have damaged the public perception of electronic voting equipment.

Even with the increased security procedures there are still those who believe voting machines should not be trusted. The committee took testimony from both local and out of state witnesses stating their cases against electronic voting machines.

Clint Curtis, a programmer who worked for Yang Enterprises in 2000, shared with the committee how easy it is to install an internal hack in a voting system. Mr. Curtis flew in from Florida to share with the committee his concern and experience. His concern was not an external hack, but an internal hack. An internal hack involves someone, who from within a company, programs the hack within the actual code of the program. There are millions of lines of code within a program defining what is seen on screen. One line of code amongst millions of lines of code can be built within the program "hacking internally" to disrupt the program and can be activated by anything such as a date, time, etc. Once it is turned on, the voting machine is merely following the directions that were programmed in it.

According to Mr. Curtis's testimony while working for Yang Enterprises he was approached by, among others, the incoming speaker of the Florida House of Representatives with a request to create a touch screen based program with hidden "buttons" planted inside the programs code. This program would be designed to flip votes during an election. Believing this was a project to learn how to mitigate electronic vote tampering, Mr. Curtis built the program. He wrote an additional program counter acting the vote flipping program. Upon delivering the program he was told the program was not built to stop potential flips, but to actually flip votes.

He delivered the program, but is unaware if it was used. Florida's law, he states, allows one to build a machine with the capability to flip votes, it is just illegal to implement such a program. The point Mr. Curtis made to the committee was the entire method of voting electronically is based on trust. Trust in the manufactures; trust in manufactures' employees and so on. He stated it would not take much to flip an election, and with a program he designed he showed the committee how it could be done. The Secretary of State's Office pointed out the problem with such a program is the current rate of time it takes to certify a voting machine. A person who were to write such a code would have to know years in advance who was going to be on the ballot before the actual election. Only then could the program be effectively carried out.

Dr. Dan Wallach is a professor at Rice University whose research focuses on computer security and has been researching electronic voting systems since 2001. He also worked for the California Secretary of State during the 2007 Top to Bottom review. He disagrees with the talk in regards to what was done in the reviews in California and Ohio.

Statements negating threat models, or that the study did not consider how poll workers operate he says are incorrect and all were considered. While all voting systems do have flaws, he believes electronic voting systems have a variety of security flaws enabling fraud of a scale and simplicity previously unknown.

Dr. Wallach cited practical voting machine errors he believes plagues voting technology. Human error is one main cause of failures with voting machines. While investigating a race in Webb County involving an incumbent and challenger, Dr. Wallach was unable to produce any evidence of actual fraud but was able to produce procedural errors on a county level.

He additionally cited findings from a report put together by Rice. For this study Rice created a DRE system that would lie on screen. The purpose of this project was to find out how many people would actually notice if a vote was changed or not. They discovered 60% of the test subjects did not notice when the review screen was manipulated. Still 95% reported they felt the review screen was useful and preferred the DRE to other methods of voting.

Dr. Wallach also brought up the issue of security vulnerabilities. When working for the Secretary of State of California he was on the team examining the Hart Intercivic systems. His team found an attacker could plug into any Hart eSlate machine and send it a variety of commands. What was worse they found was a single corrupted machine, when connected to the "tally" machine (used for inventory control, among other things) could possibly corrupt the tally system and subsequently attack other machines.

His conclusions are every electronic voting system used in Texas is unacceptably vulnerable to very simple yet staggeringly effective security attacks. Dr. Wallach said the same vulnerabilities he and others found could be exploited without leaving any evidence behind and cautioned just because no one is aware of any attacks does not mean attacks have not occurred. His suggestions to the committee were to limit DREs to one per precinct and to manually hand count paper ballots. He additionally suggested eliminating straight party ticket voting, which would reduce confusion among voters.

Bruce Funk, former election official of Emery County Utah, testified before the committee as well. He served for 23 years working in elections in Utah. After HAVA came into effect he was invited by the State of Utah to be on a selection committee to select the type of machines Utah was to buy. Being partial to the optical scan units in use in Emery County, he felt he would have a biased opinion and did not want to be on the committee.

Mr. Funk stayed on the committee and was opposed to DREs. He saw numerous calibration problems during testing. Upon initial acceptance testing in Emery County six DREs were rejected, two more would later have to be replaced. Mr. Funk felt as if he was being set up to fail and called in independent investigators. He called the organization Black Box Voting, who brought in computer programming expert Harri

Hursti from Finland. Mr. Hursti was given nothing more than a voting machine and found serious concerns. He in turn called in security expert Hugh Thompson of Security Innovations. Together they found password security holes or security holes only accessible by password, which were later deciphered. According to Mr. Funk Emery County entered into a contract with Diebold, the manufacturer of the DRE in question, to remove what Mr. Funk and the investigators found. He offered to pay for damages, but was denied the opportunity and was later locked out of his office and removed from his job.

Debra Medina, Wharton County Texas Republican Party Chair, does not agree with the success the county election officials have had. Her experience with voting machines has not been as pleasant and believes no amount of training is going to fix a technically flawed machine. She has a well documented case from November 2007 where a DRE changed a voter's vote on the screen in front of them and could not correct it. She has also had machines fail after public testing due to calibration issues, only later to find out one of the Attorney General's Examiners found and reported on the same issue when reviewing the machine.

Expert witness Jim March, a board director for Black Box Voting, believes the state certification process has failed at some level and showed the committee a pair of expert reports on machines from Wharton County Texas dated January 2007. He quoted James Sweringer PhD, an examiner for the State of Texas in regards to machines like the ones used in Wharton County. "We agreed in advance to divide up the tasks between the engineers. This allowed us to go into great depth of each, but it also meant that most results were not personally observed by every examiner." This statement, Mr. March believes is why some examiners report some issues and others do not. While assisting Debra Medina in Wharton County, Mr. March found vote total discrepancies very much akin to those found by another examiner a year earlier. The complexity of the electronic voting technology was best illustrated by Rep. Lon Burnam's statement, "The concern is that you have convinced me of the oversight problems, but the elections administrators convinced me they can't physically handle a paper ballot system."

Karen Renick, founder of Vote Rescue, is an advocate of the hand counted paper ballot. She believes there has been much misrepresentation and misinterpretation of the Help America Vote Act when it comes to electronic voting machines. She indicated HAVA does not require hand counted ballots be replaced by DREs, but only requires individuals who are disabled be able to vote independently and privately. This is verified in SECTION 301. **Voting System Standards** of the Help America Vote Act.

Ms. Renick believes the costs related to the electronic voting machines were not stressed enough during the transition of voting methods and the money spent itself is a reason to go back to paper. The first of this money spent being the 3.8 billion dollars given to the states from HAVA to acquire voting machines. Along with these machines, she explained, came additional unmentioned costs of storing the machines in environmentally controlled storage facilities, keeping the batteries, charged, transporting the machines,

insurance costs, yearly renewal of software licenses and the technical support accompanying the machines are all costs burdening the counties.

Through phone interviews with county election officials, according to Vote Rescue, they found that Hays County's maintenance cost was reported to go from \$4,000 to \$40,000. El Paso was said to lease a building for \$30,000 a year for machine storage. She believes these costs should be redirected to the communities by way of increasing pay for poll workers and investing in more poll worker training, not on electronic voting equipment.

Alison Harbison, Shelby County Clerk, expressed her concerns of the costs attributed by the voting machines. Shelby County has 14,485 registered voters with 14 county precincts and 6 school districts. Even when city and school elections are held jointly to assist in costs for entities, the cost increase has been over 50%. Ms. Harbison believes the election software companies have exclusive control of the costs. By adding political subdivisions under a population of 2,000 to the exemption of electronic voting requirements, she believes, would give the smaller counties needed fiscal relief.

All manufactures testifying urged the legislature to look closely at federal guidelines if it considers changing certification procedures. Doing so would minimize duplication, save state resources, efficiently allocate staff time, and minimize the time it takes to certify a voting system effectively. In turn reducing the costs made up on a county level.

Advocacy groups like Vote Rescue believe going back to manual hand counted paper ballots is the only way to stay away from stolen elections. They believe the idea could effectively work if all precincts were smaller in order to make the manual count process more manageable. However, in regards to smaller precincts Representative Burnam pointed out, from practical experience, one does not know how many voters will show up in one precinct to the next. All the state would be doing is creating a practical need to have more people working at precincts, because the number of precincts has increased.

Abbe Waldman-DeLozier of Vote Rescue stated, "If it takes days to count the votes then that is what needs to happen, because what we have now is what I call fake elections." She said in doing their own surveys, 80% of the people approached in their citizens exit poll were willing to tell them how they voted because they were concerned with the voting machines.

May Schmidt has been an election judge in Travis County since 1970 and has worked with every form of voting from manual hand counted paper ballots to the DREs. She reported to the committee she hears lots of complaints from her precinct because of electronic voting. She believes in some cases paper ballots can handle problems like massive power outages and not being able to be let into a building on time, better than the machines can.

Chairman Berman was honest with those in attendance, "You are asking us to tell 254 counties to forget what you are doing, get rid of all the machines and go back to paper

ballots. This legislature is very reluctant to have a mandate of any kind on our counties, county commissioners, and our county judges. I understand what you are saying, we all do, but I have to be perfectly honest with you even if such a bill came out of this committee, I doubt it could pass in the legislature." Representative Bohac followed the paper ballot argument by pointing out the reason why there was a move from paper was because there were many types of problems and fraud with paper.

Voter Verified Paper Audit Trails (VVPATs):

Even though all DREs are required to have a paper audit trail, there is still concern with the lack of verification of the ballot by the voter. To meet public concern the manufacturers provided the Voter Verified Paper Audit Trail or VVPAT. California was the pioneer in requiring VVPATs. Voting systems with out VVPATs in California after July 2006 could not be used.¹⁸ Currently there are 16 states (or at least some jurisdictions in these states) using DREs requiring VVPATs: AK, AZ, CA, CO, HI, IL, IA, MO, NV, NY, NC, OH, UT, WA, WV, WI. Three states (or at least some jurisdictions in these states) use DREs with VVPATs, but have no official VVPAT requirement: MA, MS and WY. Seventeen states use or will use paper-based voting systems (the vast majority are counted on optical-scan systems): AL, CT, FL, ID, ME, MI, MN, MT, NE, NH, NM, ND, OK, OR (vote-by-mail), RI, SD, VT. Fourteen states and the District of Columbia currently use DREs in at least some jurisdictions (in DE, GA, LA, MD and SC they are the only system in use statewide) and do not use nor require VVPATs: AR, DE, DC, GA, IN, KS, KY, LA, MD, NJ, PA, SC, TN, TX, VA.¹⁹

In the most recent congressional session there were a number of bills mandating the use of VVPATs. However, due to the large outcry from computer scientists, Secretary of States, and county election officials from across the United States these bills did not become law. Would VVPATs help increase voter confidence and security? While some believe it would, others contest VVPATs would not assist in the voting process would be a waste of government dollars and a false sense of security.

Every county official testifying before the committee agreed the VVPAT in itself is not a security measure and believes it would not be a good idea to require VVPATs in the State of Texas. Dana Debeauvoir told the committee, "Many of us believe that there is no roll that the voter can play in electronic security, and where the only security features is hoping that a voter will catch an error. That's not security. A VVPAT will give them an opportunity to see what they have entered in, but VVPAT is not security at all."

Joy Streater went to a demonstration of the VVPATs. She recounted three times the machines jammed. She explained what she saw was a roll of thermal paper able to hold 100 ballots. As she illustrated if a precinct has 20 machines and 4,000 ballots it will take many small rolls of paper and a worker whose job will be to watch paper. The paper she stated would be one more thing to lose and would be an additional cost. Bruce Sherbet of Dallas County cautioned the committee stating Texas should really pause and consider the VVPAT and not make it a knee jerk reaction as he has seen other states do.

Dennis Borel (CTD) stated most disability groups are opposed to VVPATs, because at the time he believes the technology does not exist so voters would have an equal footing on verifying the ballot, especially those with disabilities. He believed there could be a time when the technology is there, but is not here now.

Even advocacy groups originally who were proponents of the VVPAT have changed their position. Vicki Karp, of Vote Rescue, gave reasons why their organization has changed their position on VVPATs. She cited 20% of the paper trails turn out to be illegible or unusable due to double printing or paper jams. Numbers from Caltech/MIT studies, she reported, show up to 80% of voters not checking the trail before casting their votes. Ms. Karp cited a study done in Cuyahoga County Ohio where 10% of the paper trails did not match up with a voters vote.

One report studied came from Georgia. This report studied what resources were used when using a verifiable paper trail and whether or not it was a good option for Georgia to use. Cobb County Georgia participated in a pilot program in which one precinct of three counties in Georgia would produce a VVPAT for the 2006 November General Election and any runoff elections following. This pilot program was established to assist the Georgia legislature decide whether or not a VVPAT requirement was a viable solution.²⁰

What Cobb County found was the precinct chosen to have machines with paper trails had constant lines of 1 and 2 hours long during Election Day where other precincts had only occasional lines not more than 20 minutes, but sometimes as long as 50 minutes.²¹ An issue thoroughly covered within the Cobb County report was the large amounts of extra paper having to be handled and stored. A paper tape contained around one and a half feet per voter. With 976 voters in that precinct alone the paper accumulated was approximately 1,464 feet of paper tape proving to be very unwieldy and hard to handle. Much of the time spent by Cobb County election officials was unwinding and adjusting paper tapes.²²

To audit the VVPATs it was necessary to staff 18 people each day for 5 days. Cobb County started with four counting teams of three workers. However, at the end of the first day election officials believed they had not progressed sufficiently enough for the time span given and added two more teams of three.

There were two recorders and one caller to each team. Each time the caller said the name of a candidate the recorders made a vertical mark. Once there were four vertical marks a fifth mark was hashed through the vertical marks. As soon as this occurred the two recorders would call out "Tally". If "tally" was not called by both recorders at the same time, they were required to start the process all over again and find the error before going on.

It was also necessary to expand the space utilized for auditing ballots as well. Cobb County started out with an auditing room containing around 400 square feet, but ended up

having to acquire a second auditing room containing 155 square feet to adequately accommodate the process.

What were the results? Cobb County Election officials found all manual tallies matched the machine counts, proving the machine counts were correct. However, cost as measured in both time and money was high. There were 24 different employees, three managers, and a Diebold technician that were used in a course of five days. Their total cost for the one precinct was \$2,937.45, which did not include the three managers and Diebold technician (whose salary was paid by Diebold). The total hours between teams were 312.25 hours in five days.²³ The time it took for the teams to count one ballot varied from three to eleven minutes averaging at five minutes a ballot. A total of 11 hours were spent on "recounts" caused by human error.²⁴

The Cobb County election officials concluded, "The manual audit proved the touch screens did count the votes accurately, however, it also proved having humans count by hand is not an efficient method of counting. Humans make lots of errors and have to go through the steps many times in order to get the right answers. Humans take a very long time to do what machines can do instantaneously."²⁵ They suggested in their report if VVPATs were mandated, the manual audit process should only be used for selected races.

The time required to count ballots by hand would prevent the election officials from even being able to conduct the next election. For example, the Cobb County election officials calculated how long it would have taken them to count the General Election of 2004 in Cobb County alone. There were 229,231 ballots cast in Cobb County, if they averaged 5 minutes a ballot as they did in the manual audit then it would have taken them 19,102 hours to manually count the ballots. They calculated if they had 20 teams working 40 hour weeks the manual count would take 24 weeks. The price tag for such a project, Cobb County estimated, would be \$520,000.²⁶ Incidentally, Georgia is a state not requiring VVPAT machines. How many combined hours would it take for a state the size of Texas to manually count ballots? Using Cobb County's average of 5 minutes per ballot and multiplying it by the 4,399,116 votes cast in the 2006 Gubernatorial Race (as found on the SOS website) then dividing that total by 60 in order to extract the time, it would take 366,593 hours or roughly 42 years to manually count those ballots.

The committee also made contact with Nevada, a state requiring VVPATs, to get a balanced look at states that do not use VVPATs vs. the ones who do. Committee staff contacted Clark County Clerk, Harvard Lomax, in North Las Vegas, Nevada in regards to the states' policy on VVPATs.

In Nevada the electronically recorded results are considered the voter's ballot and the paper tape or voter trail is only used for auditing the accuracy of the electronically recorded results. These paper tapes are not used for recounts, but are only used for auditing. Voters are not allowed to keep the paper tapes. When asked about machine failure Mr. Lomax stated since the VVPATs are mechanical devices they do experience

paper jams. However, all in all failures have been few and far between. Most jams are the result of workers improperly installing the paper. Since the VVPAT mandate Clark County has been able to reduce the number of human induced errors by improving training and quality control when threading the paper.

In regards to costs associated with VVPATs, he stated because the rolls of paper are thermal paper there is no cost for ink. However, because of the hot climate in Nevada they must store the thermal rolls in water cooled ware houses. The thermal paper itself is \$1.25 a roll and he estimated they would use about 10,000 rolls of paper in the 2008 Presidential Election. He believed in comparison to the over all Presidential Election the cost of paper would not be significant.

When asked if he believed the benefits of the VVPATs outweighed the problems and costs associated with them Mr. Lomax stated, "This is a difficult question in that it is very subjective. We have 5,000 VVPATs that would now cost the county \$5,000,000. Since the VVPATs were added to our electronic voting machines, the complaints I used to hear about 'paper trails' have essentially disappeared. I very much appreciate that. On the other hand as County Registrar, I know that the machines are accurate and that the entire cost of operating and maintaining the VVPATs is simply to maintain public confidence in our election process. Obviously, one can argue that no price is too high to ensure the public has faith in its elections, but \$5,000,000 is quite a bit to quiet what amounts to a very, very small but very, very vocal portion of the electorate."

Mr. Lomax gave this advice to the committee before considering enacting legislation mandating VVPATs, "Don't rush into anything. Pay close attention to what the Election Assistance Commission is doing in regards to federal standards for voting equipment. The EAC moves very slowly and you don't want to spend a lot of money into voting equipment that in a year or two may no longer meet federal standards."

The committee was also fortunate to receive written testimony from Michael Shamos. Michael Shamos has been a faculty member in the School of Computer Science at Carnegie Mellon University in Pittsburgh since 1975, an attorney admitted to practice in Pennsylvania and before the United States Patent and Trademark Office, an examiner for Pennsylvania and has performed 121 voting system examinations and recently was on the task force of the Florida Secretary of State that examined the source code used in voting machines in Sarasota County during the disputed Buchanan-Jennings congressional election. He testified before the U.S. Senate Committee on Rules and Administration on July 25, 2007 regarding the proposed bill mandating VVPATs. In his testimony he argued even though the bill makes repeated reference to verification it does not come close to providing it. The VVPATs may show the voters their choices are correct but does not verify the ballot will even be counted, or that it will even be present for a recount or a later audit. He argued a VVPAT does not provide privacy, because a simple comparison between the VVPAT and the poll list gives away everyone's vote in violation to the SECTION 201 requirement of a secret ballot.²⁷

During the time the legislation in question was heard there were no commercially manufactured DREs meeting the requirements in the legislation. This legislation would have effectively outlawed DREs in the U.S., despite the fact they have been used in the U.S. for 28 years with out a single demonstrated incident of tampering in an election. Conversely, in the same period he continued, there have been hundreds of people who have gone to jail for tampering with paper ballots. Mr. Shamos pointed out the main problem with DREs is reliability, stating 10% of machines fail on Election Day. He continued by saying it should be obvious that adding one more mechanical item like a printer only would reduce reliability. Conducting audits would be lengthy he testified, counting 2% of ballots in a state with five million voter would require approximately 16,000 hours or eight man years. This would require the service of over 100 people full time for three weeks just in one state.

Michael Shamos believes end to end verification is the holy grail of voting systems; however, no such verification is now possible with any commercially available system. He urged the Senate Committee not to require anything essentially mandating some existing system and discouraging research and development into voter verifiable systems. He also believed there is no reason why election-dedicated software should be confidential. As long as codes in voting systems remain secret, he believes the public will never trust it. He left the Senate Committee with these words, "The very idea that a paper record is secure at all continues to be refuted in every election. It is folly to mandate nation wide changes to our voting systems each time a problem manifests itself. Voters and election workers need time to adjust to such changes which used to occur approximately every few decades, not every four years."

Recommendations:

The committee would like the 81st Legislature to understand the issue regarding electronic voting equipment is a complex topic and no solution is as easy as it may appear. There are many variables to reflect on when considering changing standards or the Election Code. No decision should be based on emotional reactions but educated decisions. The 81st Legislature should not dismiss concerns presented, it is through these concerns the Legislature may be able to pinpoint actual problems and be able to assist with the development and security of Texas's current and future voting methods. The committee also advises the Legislature to be mindful of those officials carrying out any changes made to law and realize county election officials require sufficient amounts of time to properly follow through with those changes. The following are the recommendations to the 81st legislature.

1. After listening to testimony and researching the current VVPAT process the committee has serious concerns about the implementation of Voter Verified Paper Audit Trail technology. As Michael Shamos stated mandating this medium would only discourage the development of perhaps a newer and better medium. The costs associated with VVPATs would be large not only monitorial but in time as well. The committee believes it would not be an efficient process at this time. While the committee believes

providing a secure method of auditing elections is a worthy policy goal and is a high priority, the committee believes the VVPATs may not be an adequate source of security. The committee asks this legislature to be patient while working with the SOS, manufacturers, county election officials and advocacy groups as a more innovative and secure voter verifiable audit system is developed.

2. While the committee realizes all counties work diligently to properly execute security procedures during election time, it does find it disconcerting that all 254 counties may have different testing standards. The committee believes it would be healthy to look into a standardized testing method for the state. With the help of the SOS and the county election officials, the Legislature may be able to come up with a solution allowing all counties to participate.

3. The committee believes the Legislature should review the current certification process with the Secretary of States Office to make sure Texas does not "double up" on certification processes carried out on a Federal level. Expediting the certification process, while not jeopardizing the integrity of the process, would lower costs to the manufacturers. This in turn would lower costs on a county level.

Additionally the committee believes the SOS should review all procedures within their certification process in order to make sure there are no oversights when certifying a DRE.

4. Through out the hearing the committee heard of instances of voting machine failures, which were the cause of human or procedural error. The committee recommends working with the SOS and county election officials to increase training in the procedures surrounding the electronic voting machines in order to reduce the number of procedural errors.

5. In regards to voter confidence the committee believes all counties should publicize all examination dates of electronic voting machines and keep the public well informed of the processes being used during and after election dates.

6. In response to the idea of a Texas Election Center, the committee believes this idea should be thoroughly looked into during the 2009 interim. A Texas Election Center could be responsible for technical support currently depended upon the manufactures. Testing, consultation, ballot design, and a number of benefits could be provided by such a center.

Charge No. 2

Examine the prevalence of fraud in Texas elections, considering prosecution rates and measures for prevention. Study new laws in other states regarding voter identification, and recommend statutory changes necessary to ensure that only eligible voters can vote in Texas elections. Specifically study the Texas mail-in ballot system, the provisional voting system, and the various processes for purging voter lists of ineligible voters.

Background:

It was October 3, 1707 and all eyes were on Edinburgh, Scotland. Scottish parliament would vote on the unionization treaty between Scotland and England. Even though most Scots hoped this union would become a federation of the two kingdoms they were dismayed as they soon discovered the two nations would unite to become the new entity of Great Britain; a government being far more English than Scottish. Though the Scots would have access to England's overseas markets, and though this union would eventually bring back prosperity to the downtrodden country, this did not justify the means in which some votes of unionization were claimed.

Orders from London to the leader of pro-union forces, James Douglas, Marquis of Queensberry were simple: secure ratification of the union treaty by any means possible, up to and including buying votes. London had even provided him with a secret slush fund of twenty thousand pounds to assist in his task. It is unclear how many votes were actually bought, but it does not hide the fact there were votes bought.²⁸

This one example of election fraud happened just over 300 years ago; one thing learned from history is as years change, the acts of some people in a society do not.

Black's Law Dictionary defines "election fraud" as illegal conduct committed in an election usually in the form of fraudulent voting. Examples include voting twice, voting under another person's name (usually a deceased person) and voting while ineligible.²⁹ Fraudulent voting is not the only form of election fraud. In fact, the words "election fraud" and "voter fraud" hold a much broader scope and refer not to a particular crime, but to a variety of offenses found in the Texas Election Code where an individual or a group of individuals attempt to influence the outcome of an election through illegal means. Election fraud ranges from illegal voting and vote buying to tampering with electronic voting equipment.³⁰ It may include, but is not limited to, falsifying voter registration information, forging mail-in ballot applications, coercing voters to vote for specific candidates, and a number of other offenses.

Texas itself has had a history littered with examples of voter fraud. During the election of 1896, in Robertson County, when there were several African American candidates on the Republican-Populist ticket, Democrats are reported to have stolen ballot boxes and intimidated voters by riding through the predominantly African American precincts with guns drawn.³¹

The mid 1900s were a time marked by powerful political party machines. Border counties in particular were reputed to have some of the most fraudulent elections in the country, credited in part to "Duke of Duval" machine boss George Parr, who exerted enormous political influence over Duval and Jim Wells counties. Machine bosses and large employees, or *patrones*, would use their substantial economic power over their workers, including many Mexican nationals, to control their votes, and would even import thousands of voters from Mexico on Election Day to vote as instructed. This so called block voting has been reported in South Texas since the late 19th century.³²

Texas has come a long way from the rough and tumble past of machine bosses and the flamboyant theft of ballot boxes. Voter fraud tends to be more subtle and happens less frequently today than it did so many years ago, but still exists in Texas. Today there are divisive splits in Texas government regarding fraud. Some believe it runs rampant, while others believe it does not exist at all. Questions surrounding the frequency of fraud in Texas are the catalyst for Charge No. 2. Is there fraud? How much? Is there a problem covering the entire state or is fraud merely in small pockets of the state? The purpose of Charge No. 2 is to examine the prevalence of fraud in Texas, consider prosecution rates and measures for prevention; study new laws in other states regarding voter identification and recommend statutory changes necessary to ensure that only eligible voters can vote in Texas Elections; specifically study the mail-in ballot system, the provisional ballot system and various processes for maintaining voter lists of eligible voters.

The committee investigated this charge in a public hearing on January 25, 2008 and discussed all of these topics at great length with different state agencies, county election officials, advocacy groups, and experts who traveled from out of state. This report will first cover three of the internal structures helping make Texas' electoral process: the absentee (mail-in ballot) system, the provisional ballot system, and the different procedures used to maintain our voter roles. Next the report will cover the prosecution rates of voter fraud found in Texas and will pinpoint problem areas where most "election" or "voter" fraud occurs. Thirdly, this report will briefly touch on the issue of voter identification, will look at what other states are doing in regards to photo identification, briefly touch on the arguments making up the controversial issue of photo identification, and then will look into considerations states must face when deciding on whether or not to enact a photo identification program. Finally, the committee will give its recommendations to the 81st Legislature on ways to further secure our voting processes.

Three Processes:

Absentee (Mail-In) Ballot System:

Today 21 states including Texas and the District of Columbia require an excuse to vote absentee by mail and 29 states that allow absentee voting by mail without an excuse. Out of all 50 states Oregon is the only one voting entirely by the mail-in ballot system.³³

In the State of Texas each election is required to conduct early voting either in person or by mail. A voter is eligible to vote by absentee (mail-in ballot) if they will be absent from their county of residence at the time of the election, if they have a sickness or disability preventing them from going to the polls, if the voter is 65 years or older, or is confined in jail. A qualified voter may also vote by mail if they are participating in the State's confidentiality program.³⁴

For someone to vote by mail they must submit an application or request (which can be made by the voter) to their early voting clerk. The request must include the voters name and address where they are registered to vote, the reason for voting by mail, and an indication on which election that person would like to vote in. Voters may have someone assist them when filling out their vote by mail application. Anyone other than an early voting clerk or a deputy may sign on the voter's application as a witness as long as they indicate their relationship status with the applicant they are witnessing for. A person cannot witness for more than one applicant, however, they may assist as many voters as they would like. If merely assisting a voter, that person still must indicate so on the voter's application.³⁵ Anyone who witnesses for more than one voter commits a Class B misdemeanor. Moreover, each additional application a person witnesses for constitutes as a separate offense. In order to protect a voter's application, the Election Code states that a violation of this kind does not affect the validity of an application involved in that violation.

These applications for mail-in ballots must be submitted to the early voting clerk by mail, common or contract carrier, or fax on or after the 60th day before Election Day and before the close of regular business, or 12 noon, which ever is later on the 7th day before Election Day. An application will be considered submitted once the clerk has received it. The voter may also choose to deliver the application by hand to the clerk at least by the close of the regular business day before the first day of the early voting period. An official mail-in ballot application will then be sent to the voter by the early voting clerk without charge. The contents of these applications and its regulations are established by state law in the Election Code.

Provisional Voting:

Provisional voting was introduced through the passage of the Help America Vote Act (HAVA) of 2002 and was a procedural response to the issue of voters being turned away from the polling place. This system ensures that any individual wishing to cast a ballot at a polling place may.

It is a common myth provisional ballots are only counted if they will have an effect on the outcome of an election. This is **not** true. There are two different ways states decide to count provisional ballots. Thirty states, Texas included, and the District of Columbia require that a provisional ballot must be cast in the correct precinct before they are counted. Fifteen states count provisional ballots only if they are cast in the correct jurisdiction, i.e. municipality, county, state. These states include: Alaska, California,

Colorado, Georgia, Kansas, Louisiana, Maryland, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington. Idaho, Minnesota and New Hampshire are exempt from HAVA's provisional ballot requirement because they allow Election Day registration. North Dakota is exempt because it does not have voter registration and Maine allows voters to cast challenged ballots.³⁶

Texas's provisional ballot system requires a provisional ballot be cast in the proper precinct in order for it to be counted. It is important to note that given Texas' early voting in person system, the precinct requirement is limited to Election Day itself.³⁷ This factor is important to take in account when comparing Texas' provisional voting system to other states' systems.

There are many instances when someone would vote provisionally. An individual who claims to be properly registered and eligible to vote, but whose name does not appear on the list of registered voters and the voter registrar cannot be reached or whose registration status cannot be confirmed by the voter registrar; an individual who is not on the list and did not provide a voter certificate or other form of identification, or an individual who is registered in the precinct but whose registered address is not located in the political subdivision conducting the election are just a few instances establishing whether or not someone is eligible to vote provisionally. One great benefit of the provisional voting system is the Provisional Voter Affidavit Envelope, the affidavit a voter must properly fill out before voting, doubles as a voter registration application in case the voter is not registered.

Once a voter goes through the process and votes provisionally their ballot is sent to the voter registrar who will review the provisional voter affidavits within 3 business days of the election and organizes the ballots by precinct. The voter registrar places all the envelopes in a secured container and delivers them to the Early Ballot Board meeting or General Custodian of the election records. Here the ballot is reviewed and determined whether or not to be counted. The ballots to be counted are removed from their envelopes and tabulated. Once counted the ballots are put back in the secure container and a notice is sent to provisional voters not later than the 10th day after the election, letting each provisional voter know if their ballot has been counted or not.

The Secretary of State's Office (SOS) has taken a proactive roll in educating the state's poll workers with regards to provisional voting. Upon request the SOS will conduct onsite election schools to train election workers on a variety of polling place procedures, including provisional voting. The SOS also provides extensive materials to county election officials to be used in training workers and holds annual seminars for all involved running the elections of this State. The accessible elections staff providing one-on-one guidance and assistance via telephone and email to any county election officials, election workers, or individual voters contacting them should not be forgotten either.

There are SOS legal staffs who conduct extensive training workshops to articulate the laws and procedures relating to elections. These workshops address specific topics,

which include Election Day procedures and provisional voting. The SOS has also implemented online training providing individual poll workers detailed instructions on polling place procedures, how to qualify voters, and provisional voting.³⁸ The Secretary of State's Office understands the importance of keeping all those involved with elections educated on the newest applications and makes every effort to do so.

Maintaining Voter Rolls:

The committee was also instructed to study the way voter registration lists are maintained in the State of Texas. Testimony and research found that the Texas Election Code provides a variety of methods to properly maintain these voter registration lists. The registration files are overseen at a state level by the SOS and at the county level by the voter registrar.

The SOS maintains the official list of registered voters through the centralized state computer system called TEAM or Texas Election Administration Management system. The state of the art TEAM system was built to fulfill a requirement by the Help America Vote Act (HAVA). HAVA mandated all states develop and maintain a statewide, centralized, interactive computerized data system, among other things, housing the name and registration information of every legally registered voter in the state. TEAM replaced the non-HAVA compliant Texas Voter Registration System. (TEAM is further investigated in Charge No. 3; details regarding TEAM in that charge will not be repeated in this report). There are two types of counties using TEAM, online counties and offline counties. Online counties are directly plugged into TEAM, meaning all information the county inserts while registering a voter is on real time. Offline counties, which are mainly urban counties, are not on real time and must report daily to the TEAM system in order to update all files and to verify voter registration applications.

In January of 2007 when TEAM release 1 was first launched 227 counties were online, by March 2008 after continuing difficulties with the new system and before the TEAM Validation Test commenced, 215 counties were online. With the success of the TEAM Validation Test (which is detailed along with the State Auditors Report in Charge No. 3) more counties came back online. As of August there were 218 counties online and the number is expected to increase with continued enhancements.

The TEAM system must verify the Texas driver's license number or personal identification number of each voter registration applicant. If an applicant does not have a driver's license or an identification card, the applicant must supply the last four digits of their social security number. If the SOS is unable to verify the applicant the applicant is registered and the SOS flags that applicant as "ID" meaning when the person in question comes to vote they will have to provide a proper id as described by the Texas Election Code.³⁹

Once voter registration applications are entered in TEAM, the system searches for any discrepancies regarding a person's information and will automatically cancel any

duplicate registrations when a strong enough match occurs between records. For instance, the system will cancel an older registration card in order to keep everything up to date. If someone moves to Austin from Dallas and registers in Austin, but is still registered in Dallas the older of the two registrations, in this case Dallas, will be cancelled. If a weak match is identified the information is sent to the voter registrar who will send a confirmation notice to the voter. If the voter does not respond the voter's name will be placed on the suspense list.⁴⁰

Between November 15 and December 5 of each odd numbered year the SOS office will send out a non-forwardable renewal voter registration certificate to each registered voter. If a certificate returns to the voter registrar he or she will send out a forwardable confirmation notice with a response form. If the voter confirms their new address within the county their registration card is updated. If the voter responds, but no longer lives in the county then they are cancelled within that county. In the case the voter registrar receives no response the voter in question is put on a suspense list. Those on the suspense list are still eligible to vote as long as they still reside in the county and political subdivision conducting the elections.

The voter may even vote at a precinct they are registered in, but currently do not reside in, provided the voter completes a statement of residency form affirming residency in the same county and providing their new address within the county. A voter's name is on the suspense list for a period of two federal general elections. If the voter does not vote within this time period or does not update their voter registration card their name is removed from the voter registration list.⁴¹

The SOS also receives weekly updates from the Bureau of Vital Statistics to determine deceased voters who need to be removed from the lists. The Department of Public Safety shares information enabling the SOS to keep the voter registration rolls updated with regards to individual felony convictions. When removing voters from the registration list the SOS office takes very careful steps in doing so and is extra careful in making sure they do not mistake a so called "dead" voter with someone who has the same name. As to whether or not the lists are maintained; in 2002 there were 377,133 voters purged using the suspense list process and in 2004 (a presidential year) 520,784 voters were purged from the rolls using the same process.⁴²

Voter registration applications are also received on a local level and are maintained through TEAM. There are a number of abstracts filed monthly with the county's voter registrar enabling them to determine who should be removed from their voter registration lists. These compiled abstracts tell the voter registrar if there are deceased voters, if there are voters who have become mentally incapacitated or partially incapacitated and are no longer eligible to vote, or if through comparing with the local jury wheel information they find a registered voter is ineligible to vote. Lists of felony convictions from DPS are sent to the voter registrars by the SOS so they can promptly cancel the felon from their registration list. One advantage the local voter registrars have over the SOS is they are plugged into their community. Being active in the community allows local voter

registrars to be privy to updated address information provided by voters, deaths in family, and things of that nature.

As one can see, the Texas Election Code provides a selection of procedures both the state and local officials can use to ensure the state's voter registration rolls are accurately and consistently maintained. The safety and efficacy of voting in Texas is the top priority of the Secretary of State's Office and is a duty not taken lightly.

Prosecution Rates and Fraud in Texas

A large aspect of this charge was to investigate if there is proof of fraud in Texas Elections and if so where is it prevalent. The committee talked with Eric Nichols, Deputy Attorney General for Criminal Justice, to find out the known prosecution rates of election fraud in Texas. County election officials as well as experts in the state discussed at length with the committee where in the election process they see problems with fraud and how the state would be able to mitigate these issues.

At the end of the hearing all committee members could agree that there is some amount of fraud in Texas' election process. What the committee found is most election fraud happening in Texas occurs within the absentee or mail-in ballot system, through voter registration, and through *politiqueras* or *vote brokers* which are predominately found in south Texas.

Another highly controversial topic brought up during the hearing was the debate of whether or not illegal aliens or legal non-citizens were voting, and/or on the voting rolls. Through talking with our county election officials and other experts the committee found the chances of an illegal alien actually voting are very slim; however there are legal non-citizens who could be on the voter registration lists and according to testimony, especially true in south Texas, there is not sufficient information to know who is a legal non-citizen and who is a U.S. citizen. As was established in the State Auditor's report on the SOS Voter Registration System, while there is information regarding tracing the deceased and state felons ineligible to vote, there is currently no authoritative source of information establishing U.S. citizenship.⁴³

The committee agreed mistakes do happen and mistakes are just that, and should not be considered fraud. The committee was shown there is information spread into the media which has not been thoroughly examined and is used to inflate the perception of election fraud. These media stories should be looked at very carefully and should not be taken to heart until all facts are established. What the committee found is there is no one solution, but a combination of solutions necessary to properly mitigate these problems.

After hearing testimony Chairman Berman appointed a sub-committee to further investigate mail-in ballots. Representative Rafael Anchia was appointed Chair of the sub-committee on Mail-in Ballot Integrity. He was joined by Representatives Lon Burnam and Kirk England. Along with looking into the vulnerabilities of the mail-in

ballot system, Representative Anchia offered for the subcommittee to investigate the issue of non-citizen voting. This sub-committee has held two hearings on the issues of mail-in ballots and non-citizen voting. The sub-committee report covers these two issues in further detail.

The Deputy Attorney General for Criminal Justice, Eric Nichols, of the Texas Attorney General's office reported to the committee on the current prosecution rates in the State of Texas. He made clear to the committee in regards to the full scope of the committees' charge in investigating election or voter fraud in Texas the cases in the Attorney General's Office (AG) are entirely referral driven, and the AG does not act as a frontline monitor or regulator for these issues. Thus the data given to the committee reflects only a portion of the state wide picture. Mr. Nichols also made clear, because of confidentiality reasons under the law and for respect of those who may be under investigation or prosecution he would only be able to respond in general terms regarding numbers and hypothetical fact conditions.

The AG is dependent on three parties or sources it gets its referrals from. The first is from the Secretary of State's Office (SOS) who takes questions and reports from outside parties and determines whether criminal conduct has occurred. Concerned local citizens and voters filing affidavits are the second source the AG relies on. Finally, the local law enforcement agencies and local election officials provide referrals to the AG. Mr. Nichols informed the committee even though the legislature has given the AG's office direct authority and jurisdiction in Election Code violations, the AG's jurisdiction is not exclusive, so local prosecutors and authorities can exercise this jurisdiction as well.

From August 2002 to January 2008 there have been 108 election code violations or referrals the AG's Office has received. To put into perspective, within this time frame the State of Texas alone has held three Special Constitutional Amendment Elections, two Gubernatorial Elections, four Gubernatorial Primary Elections, one Presidential Election and two Presidential Primary Elections totaling 12 state elections. Under these elections alone there have been 25,508,522 votes cast in the State of Texas from August 2002 to January 2008.⁴⁴

The SOS referred 60% of these cases, 12% were referred by local prosecutors, and the rest were referred from local election officials. According to Mr. Nichols 34 of these cases are connected to primary elections, 26 are concerned with general elections, and 48 are connected with other types of elections, i.e. school board, municipal, and special district. However, it is very important to take in account that within one case you may have multiple violations. For example, Mr. Nicholas pointed out in Duval County one case involved 500 voter registration applications rejected.

Within these 108 referrals there have been 22 prosecutions under the Election Code. There are 15 cases fully adjudicated and 7 cases are awaiting trial. Of the cases successfully prosecuted, 86% of these were referred by the SOS. Of the cases referred by the SOS 63% arose during the primary, 13% arose during general elections and the

remainder arose during special elections.

With respect to the 22 prosecutions as rough numbers, as Mr. Nichols put it, 14 used the alleged unlawful use of the mail-in ballot process, 1 involved campaign finance violation, 3 involved unlawful conduct at a polling place, and 4 cases involved other obstruction to the election process. When asked what Mr. Nichols meant by unlawful conduct, he responded by explaining one situation where a person escorted an elderly couple to the ballot box and actually stepped in front of them and voted their ballots for them. Cases the AG has prosecuted range from official oppression by an election official, to the activist who illegally marked an elderly couple's ballot, to the citizen who voted twice by illegally casting a ballot for her deceased mother.

One case out of Refugio County in 2007 involved a Refugio County Commissioner tampering with mail-in ballots during the 2006 Democratic Primary election. A grand jury indicted the commissioner in February 2007 after the Refugio County Sheriff's office performed an investigation and filed a complaint with the SOS. According to investigators the commissioner had mail-in ballots mailed to friends and supporters. Once ballots arrived the commissioner picked up the ballots and took them to in-county voters, who marked them in the commissioner's presence. Under a plea agreement the commissioner pleaded guilty to one count of tampering with governmental records, a state jail felony and to possessing the ballot of another person, a Class B misdemeanor. The commissioner is facing 90 days in jail and five years probation. He had to immediately resign his position and pay a \$1,500 fine. The commissioner was also required to pay an additional \$1,000 fine on possession-of-ballot charge and may be obligated to pay restitution to the county for theft of services.⁴⁵

Items brought up during Mr. Nichols testimony in regards to providing adequate protection to the election process were: Does the current law provide proper enforcement in these cases and should the AG's office be better equipped to handle more cases? Mr. Nichols was not able to comment in terms of law and legislation, but did offer in terms of the cases he discussed, the AG's office was able to prosecute each case thoroughly with existing law. What could be the issue, as the committee briefly discussed, are enforcement and the need for more people in the AG's office investigating election fraud cases. Mr. Nichols believed given their staffing both in the criminal investigations division and the criminal prosecution division the AG's office is able to handle the workload they are given through referrals, however if they had more people the AG's Office would be able to prosecute more voter fraud cases.

While talking with county election officials the committee did not find a blanket of fraud across the state. County election officials have differing experiences across the state. Most did not have any issues regarding voter impersonation fraud. Steve Raborn has had over a year and a half of experience as Tarrant County Elections Administrator and was not aware of any allegations of voter impersonation fraud in Tarrant County. Jacque Callanen, Bexar County Elections Administrator, has not seen any intentional voter impersonation fraud in Bexar County.

Dana Debeauvoir, Travis County Clerk, gave testimony of only one instance of voter impersonation that has happened in Travis County in a time span of over 21 years. The case she referred to involves a woman who showed up on the voting rolls as voting twice.

When confronted over the telephone the woman was very surprised and scared and denied she had voted twice. Later in the day Ms. Debeauvoir received a phone call from the woman's daughter, who had the same name as her mother, explaining she had voted for her mother in an attempt of being helpful. However, the daughter had failed to mention this to her mother who in turn voted as well. This one case did not lead to any prosecutions and the mother was exonerated.

Paul Bettencourt, Harris County's Tax Assessor and acting Voter Registrar, stated quite clearly, "Fraud exists period" and came with documentation of 381 detailed cases of absentee and voter registration fraud since the year 2000 to prove it. Mr. Bettencourt expressed his concern with voter registration fraud, because as he pointed out it can go easily undetected especially in a high volume situation. Out of the 381 cases since 2000 367 of these were stopped in advance.

The first case he showed the committee involved a deputy voter registrar fraudulently submitting in her own hand writing 61 voter registration cards. She used a school list to register known people into new registrations. She pleaded guilty, received a felony conviction, was sentenced to deferred adjudication, a \$500 fine, 200 hours of community service, and had to write a letter of apology.

Mr. Bettencourt also had an interesting case citing 24 examples of people who had passed away, but had voted after the dates of their deaths. This case involved a state representative who had a church member fill out 175 fraudulent registration cards with the intent of voter impersonation. One person used had died in 1983 and were still voting 13 years later. All of these registration cards were turned into to former D.A. Johnny Holmes who said they were obviously impersonating these voters, but was difficult to determine who was doing the impersonating. Mr. Bettencourt believed if Harris County had not been able to successfully detect this scam the only way to catch it would have been through some form of photo ID. He felt they were lucky to catch these cases before the election.

A topic brought into question dealt with a recent open records request by the Texas Conservative Coalition. The request asked for the number of cancellations due to citizenship status between June 1992 and March of 2007. In this time span 3,742 voter registrations had been cancelled on the basis of citizenship status. However, as Mr. Bettencourt responded the information the TCC received and the information of similar open records requests were not used in the right context. While there may be 3,742 voter registrants removed from the list because of citizenship status simply stating this number does not prove all of these registrants had a voting history nor does it take in effect the number of possible U.S. citizens mistakenly taken off the list or those registrants who were mistakenly added to the voter list by the voter registrars office itself. There are

numerous other variables that must be taken into context when looking at this number or numbers like these.

Another problem he cited which results in cancelations is Chapter 19 funding only allows for temporary workers, which result in data entry problems. Without being able to hire fulltime employees they will continue to have problems.

Mr. Bettencourt stated the problem with non-citizens being on the voter rolls is there is no source of information to determine one way or another. Texas operates on an honor system and possible registrants are asked to fill out voter registration cards merely checking a box indicating whether or not they are a citizen. He explained what is needed is a citizenship list, and has even testified before the Federal Government on this matter. He emphasized if voter registrars had citizenship lists from the Federal Government they would know who was eligible to vote and who was not.

Similar information was reported by the State Auditor's report on the Secretary of State's Texas Election Assistance Management System or TEAM system. However, the Auditors report cited concerns with different possible ineligible voters and in doing so found incomplete information when addressing not only citizenship status, but federal convictions as well.

The State Auditors Office (SAO) reported on potentially inaccurate voter information regarding voter lists within the TEAM system. (More detailed information on the SAO report is found in Charge No. 3 concerning TEAM.) Initially the SAO found more than 49,049 possible duplicate or ineligible voters in the voter registration system at the SOS Office. This number broken down totaled 23,114 possible felons, 23,576 possible deceased and 2,359 duplicate records. According to the SOS the "glitch" in the TEAM system creating duplicates was immediately remedied once found.⁴⁶

All potential ineligible voters could not be identified by auditors because the SOS does not receive the most complete death records or felony data. Daily felony data is received from the Department of Public Safety (DPS); however, the data obtained does not include felons who were listed on earlier reports and are still serving a sentence. Similarly, the Bureau of Vital Statistics sends the SOS weekly updates of death records, but does not include deaths from earlier reporting periods.⁴⁷

The SAO pointed out the SOS does not retain a comprehensive history of either felon data or death records it receives. As a result it is possible for an ineligible voter to register at a later date, and the TEAM system would not flag the record as potentially ineligible.⁴⁸ While the SOS largely agreed with the SAO's findings it did point out the SOS is almost entirely dependent on the data from DPS and the Texas Bureau of Vital Statistics because of current state law. State law also provides the counties being responsible for determining voter eligibility and for the content entered into and removed from TEAM. If changes are desired it is possible legislation may be necessary. In response to the SAO findings, the SOS wanted to also make clear, while it is important

to promptly remove illegible voters from TEAM, it is equally important to make sure eligible voters are not removed from TEAM. Lastly to remember is Texas is a Section 5 state meaning, under the Voting Rights of 1965, any changes made to the current electoral process must be submitted and approved by the U.S. Department of Justice. With these things in mind the SOS assured the SAO it would work with DPS and the Texas Bureau of Vital Statistics in an attempt to receive more complete data. SOS will also determine if there is any other Federal or State agencies able to provide information assisting the SOS in this effort.⁴⁹

The SAO believes the actual number to be higher due to incomplete data in the TEAM system. Auditors could not complete additional eligibility analysis because of lack of information regarding U.S. citizenship status, persons convicted of federal felonies, and voter id information for records lacking a social security number, a Texas driver's license number or both.⁵⁰

Federal conviction data is sent to the SOS, but is not in electronic format. As a result it cannot consistently identify possible ineligible voters.⁵¹ The National Voter Registration Act requires U.S. Attorneys to provide state election officials with federal felony convictions data. According to General Accountability Office reports, however, U.S. Attorneys have not been consistent in fulfilling this task.⁵²

While the SOS receives some information on federal conviction data, auditors could not find an authoritative source of information establishing citizenship of registered voters. Auditors contacted the U.S. Social Security Administration to obtain citizenship status. The U.S. Social Security Administration stated they could not release said data and the data in question may not have current citizenship status in all cases since individuals are not required to report back to SSA when citizenship status changes.⁵³ As the Auditor's report stated, because this data on citizenship and federal felonies is not available, a risk exists that some unidentifiable ineligible voters may retain the ability to vote.⁵⁴

Measures are in place to assist the SOS in deterring voter registration applicants from knowingly submitting false information and identifying some ineligible voter who were selected for jury duty. However, the SAO believes neither of these controls is adequate enough to ensure citizenship status is accurately reported by voter applicants. The SAO even points out neither a Texas Drivers' license nor a social security card can be relied upon to establish citizenship, because both can be issued to non-citizens.⁵⁵

Testimony was taken from a South Texas representative concerned by current practices. Rafael Montalvo, Election Administrator for Starr County, has been in the capacity of Election Administrator for two years. He has a combined total of 30 plus years in administration experience between the Marines and banking. When he first started he stood by to watch the system work and found discrepancies. One location requested 30-40 absentee (mail-in) ballots. The voter registration cards and absentee ballots all had different signatures. During this particular election 1500 mail-in ballots were requested 1,000 of which were turned in. In all, there were 278 signatures not matching and had to

be thrown out leaving around 800 votes to be counted. As it turned out five different people were requesting mail-in ballots. During the investigation led by the AG's office one person said she had never voted in Starr County in her life, but Starr County's records show her as having voted there for four years.

Mr. Montalvo explained citizenship issues they face during elections. Starr County is made up of two border crossings which allow the two communities between the borders to blend together. Because of the long history of these communities blending together there is no way of knowing who is a resident and who is not. There are issues with common surnames. Many people who may have the same name as another makes it difficult to figure out who should be on the voter registration roll and who should not. A problem he sees is the use of the voter registration card as an id to cross the border. Individuals may get a voter registration card for the sole purpose of crossing the border never intending to use it to vote. Doing this inflates the voter rolls and Mr. Montalvo suggests the legislature increase the amount of control over voter registration cards and how they are used.

Mr. Montalvo reported to the committee there simply is not enough data to determine who is legal and illegal in this area. When Representative Bohac asked Dennis Gonzales (County Clerk of Starr County, who accompanied Mr. Montalvo) what his confidence level was of whether or not illegal aliens were voting, Mr. Gonzales responded he had a high confidence level illegal aliens were not voting. Mr. Montalvo interjected he was not saying illegal aliens do not ever vote, but the chances are very slim compared to the chances of a legal non-citizens voting. He agreed with Mr. Bettencourt and stressed the need of a citizenship list.

Representative Bohac asked Mr. Montalvo what his confidence level were that 100% of the individuals voting in Starr County were actual U.S. citizens. He responded, with his experience in this field his confidence level was not good. Those voting may be legal non-citizens, but not U.S. citizens. He could safely say there are at least 2,000 voters who are brought to the polling place and walked through the system. His statement brought up the issue of *politiqueras* or vote brokers, which he said was a large problem in South Texas.

Politiqueras are paid to deliver votes and purportedly do so by shepherding elderly voters to polling locations on Election Day or by manipulating the mail-in ballot system i.e. paying others to request early voting ballots by mail and having those ballots sent to post office boxes.⁵⁶ Mr. Montalvo said some times politiqueras receive \$10 dollars per voter and can make good money during the election period. The elderly targeted are individuals who do not get out much. As Mr. Montalvo explained politiqueras offer to take these elderly voters out and they get excited at the thought of having a day out to vote, get ice cream etc. In return they will vote however they are told to vote.

Eric Opiela, an attorney in Austin who not only defends against and prosecutes election contest, but also was a victim of mail-in ballot fraud, expounded on the problem of

politiqueras. He pointed out money is the root of this problem. An example of some evidence he brought to the committee was where one candidate had reported on his Texas Ethics report \$52,000 dollars paid to various politiqueras. Another case involved a politiquera who was formerly a district clerk who received over \$11,000 in a general election. As Mr. Opiela put it, "When you have money involved it becomes a very lucrative business." His recommendation: make it a crime; a state jail felony or above for anyone to accept money or pay money for the purpose of gathering mail-in ballots or votes in general. He insisted to make the penalty a state jail felony or above because in his experience as an attorney he believed most prosecutors would not spend their time on misdemeanor cases. He, like the committee, does not want to make criminals out of legitimate assists, but believes the state must take action.

Mr. Opiela had the same concern for the mail-in ballot system currently in place. As the sub-committee on Mail-in Ballot Integrity found through testimony from Bruce Sherbet (Dallas County Elections Administrator), the mail-in ballot system is the most vulnerable and once a ballot leaves the officials hands they have no control over them until the ballot is returned. The different requirements for the mail-in ballots are what the sub-committee found to be the reason for its vulnerability. For example, as illustrated by Mr. Sherbet at one sub-committee hearing, a person must be deputized to register people to vote and there are poll watchers etc. in the polling place for both early voting and Election Day. However, when an official sends out a mail-in ballot it is just out there with no supervision. What the committee found through testimony is mail-in ballots are currently the most susceptible to fraud in Texas.

Mr. Opiela told the committee what the state is seeing is, he believes, a shift more to vote fraud using mail-in ballots. He stressed there is much less accountability associated with mail-in ballots and what people are finding out is it is a much easier and cheaper way to win an election. He also believes there is less of a chance of someone getting caught because the signature verification process is fraught with error. Dale Stobaugh, HQ Section Manager of the Department of Public Safety's Crime Lab Questioned Document Section, did the analysis of Mr. Opiela's case. In his race that was compromised due to election fraud there were over 1,000 mail-in ballots determined fraudulent, 87% proved to have signature discrepancies.

Mr. Opiela's suggestion is to take a broad look at the Election Code and close loop holes and inconsistencies within the code. For example, he explained currently the state allows individuals to register to vote by mail, without providing an id. If that person does not have id they will receive a letter from the Secretary of State's Office telling them they were not in compliance with the law. That person can then turn around and use the letter as a form of identification, because it is from a government official and is an acceptable form of identification under current Texas Statute. These kinds of inconsistencies along with improving the mail-in ballot system are issues the committee agreed need to be addressed.

Again most believed the true problem came from absentee (mail-in) ballots and voter

registration. Dr. John Taylor, a political science professor from Rice University was not necessarily convinced with roughly the number of illegal aliens in the State of Texas that there was a massive voter fraud problem. He believed it was actually hard to get a handle on fraud being committed by illegal aliens, and does not believe there are hard working illegal aliens who are under the government radar clamoring to vote. His greater concern as a political scientist and as a citizen of Texas was with the mail-in ballot.

Looking at the prosecution rates and listening to testimony it was determined much of the “election” or “voter” fraud occurring in Texas is connected to voter registration cards and through mail-in ballots. Additionally, while there is a very small chance illegal aliens could be voting, it is likely non-citizens in parts of the State, particularly South Texas do make it on the voter rolls. It is undetermined how many of these cases are mistakes or are cases of actual fraud. Either way, as Mr. Bettencourt said, these individuals do not need to be on the voter registration lists. Regulating how a voter registration card may be used, increasing awareness of the current law, stricter enforcement of current laws, taking away incentives for politiqueras to acquire votes, and perhaps broadening the AG’s jurisdiction in election fraud cases are all ideas available for analysis as possible solutions to improve Texas’s election process.

Voter Identification

Every state in the United States has a voter identification program. What becomes controversial is to what degree of identification should be required for someone to vote. Twenty-three states and the District of Columbia currently have the minimum HAVA identification requirements, which state first time voters who register by mail and do not provide id verification with their registration must show id before voting; both a photo id and non-photo id are accepted. Eighteen states, including Texas, require a photo id or a non photo id for all voters going to the polls. Three states (Florida, Georgia, and Indiana) require all voters show a photo id at the poll. Voters with out proper id are offered provisional ballots. Hawaii, Louisiana, Michigan, and South Dakota request all voters show a photo id, however, if the voter does not have proper id then the voter may sign an affidavit declaring they are who they say they are and may cast a regular ballot. Kansas and Pennsylvania both require a photo or non-photo id be shown by all first time voters at the polls.⁵⁷

The use of photo id at the polls is a very controversial issue amongst legislators across the United States. Opponents of these believe this form of law would suppress minority, elderly, and poor voters who may be less likely to have government ids or less likely to be able to get a government issued photo id. Proponents of these laws say photo id laws will increase overall voter confidence, prevent in person election fraud, and believe requiring a photo id at the polls will not disenfranchise voters, the overall burden being minimal and justified. Earlier this year the Supreme Court ruled in favor of an Indiana voter identification law.

The State of Indiana enacted an election law requiring citizens voting in person to present

government issued photo id, which went into effect on July 1, 2005. Petitioners of this law filed separate suites challenging the laws' constitutionality.⁵⁸ On January 9, 2008 the Supreme Court of the United States jointly heard *Crawford Et Al. V. Marion County Election Board ET. Al* together with *Indiana Democratic Party Et Al. V. Rokita, Secretary of State of Indiana Et Al.*. In April of 2008, the court upheld the Indiana law by a vote of 6 to 3.

Justice Stevens, joined by Chief Justice Roberts and Justice Kennedy concluded the evidence in the record did not support a facial attack on the laws validity. Justice Scalia filed an opinion concurring with the judgment in which Justice Thomas and Justice Alito joined. Justice Souter filed a dissenting opinion that Justice Ginsburg joined and Justice Breyer filed a separate dissenting opinion.

The court found the evidence in the record insufficient to support a facial attack on the statutes validity and declined to judge the law by the strict standard set for poll taxes in *Harper V. Virginia Board of Elections*. The court found the burden on the voters offset by the benefit of reducing the risk of fraud.

Complaints made in these cases alleged the new law substantially burdened the right to vote in violation of the Fourteenth Amendment, that it is neither a necessary nor appropriate method of avoiding election fraud; and that it will arbitrarily disenfranchise qualified voters who do not possess the required identification and will place an unjustified burden on those who cannot readily obtain such id.⁵⁹

While evidence by the petitioners was acknowledged by the Justices the majority of the court came to the decision; while there was the possibility of putting undo burdens on voters, those burdens were mitigated by clauses in the law allowing for exceptions for the elderly as well as for those with religious or indigent objections. These exceptions also included allowing for those voters with signed affidavits to receive a ballot, and providing photo identification to anyone using it to vote.

Justice Scalia was of the view that the premise the voter identification law might have imposed a special burden on some voters is irrelevant and should be upheld because its overall burden is minimal and justified. The conclusion was the law is a generally applicable, non-discriminatory voting regulation. The universally applicable requirements, he felt, are eminently reasonable because the burden of acquiring, possessing, and showing a free photo identification is not a significant increase over the usual voting burdens, and the States stated interests are sufficient to sustain the minimal burden.⁶⁰ While the record contained no evidence of in-person voter impersonation actually happening at a polling place in Indiana, the court felt there is no question about the legitimacy or importance of a State's interest in counting only eligible voters' votes.

With this determination made by the Supreme Court, it is now up to the states themselves to decide whether or not it would be beneficial to implement a form of photo id law. As previously cited there are numerous id laws in effect with different degrees of

requirements a person must go through in order to vote at the polls.

A good example of the different views come from two different letters the committee received from two different Secretaries of State. The first letter came from the Secretary of State of Indiana, Todd Rokita, which applauded the success Indiana's law has achieved.

As stated in the letter, "Indiana's Voter ID law is a low-cost, common sense requirement that builds integrity in our elections. Throughout the bill-drafting process, legislators and election officials worked hard to create balance between effective legislation and a low burden of production for an individual voter. We feel that we achieved that balance."

Conversely, the second letter the committee received was from the Secretary of State of Vermont, Deborah Markowitz. She applauded her State of Vermont for having some of the least restrictive laws in the nation and was proud of their record of well- run elections.

In Vermont they do not require a person to present any identification at the polls, but to simply state their names clearly so a poll worker may check their name off of the voter checklist. She said in her letter, "In Vermont we believe that voter identification requirements are an unnecessary bureaucratic barrier to voting that would cause confusion at the polls, and could prevent some people from voting. Particularly in light of the lack of evidence in Vermont that there is a problem with voter impersonation fraud, we have chosen not to require voter identification at the polls."

There is a broad spectrum of the degree of voter id requirements. Florida, for instance, graduated their identification program over the years to include photo id as the requirement to vote at the polls. Florida passed a statute in 1998 specifying voter identification to be photo id; however, voters were allowed to sign an affidavit if photo identification was not available. Then in 2005 a statute took effect in 2006 requiring all voters present photo identification at the polls. This statute took away the option of signing an affidavit to receive a ballot. Florida's most recent statute removed buyers' club cards and employee badges from the list of acceptable forms of voter identification. It is important to note that the State of Florida, like Texas, is a Section 5 state. This means all voting laws must be preapproved by the United States Department of Justice before enacted as a result of the 1965 Voting Rights Act.⁶¹

There are many different views regarding the use of photo id as a voter identification tool; however, after listening to testimony proponents and opponents could both agree since these laws are relatively new there still is very little data out there to make any real conclusions one way or the other.

Testimony from David Muhlhausen, Ph.D., a senior policy analyst for the Heritage Foundation, discussed with the committee the missing elements from court cases out of Indiana and Georgia concerning the use of photo id. He believed the element was opponents of the voter photo id could not bring a single person to testify who was prevented from voting and stated right now there was very little evidence suggesting voter id laws actually suppress the vote. He added there actually isn't enough information or studies done to determine one way or another.

Another example of differing view is between the Eagleton Institute Study and Dr. Muhlhausen's more recent study. The Eagleton study was a cross sectional comparison of state voter id laws in 2004. This study reported that in 2004 voters were less likely to vote with stronger voter id laws.

Dr. Muhlhausen's study looked into the effects of voter id suggesting voter id laws does not negatively affect voters as previously reported in the Eagleton Institute Study. Dr. Muhlhausen replicated the findings of the Eagleton Institute because he found it had misclassified voter id laws in Arizona and Illinois, it used a one tailed statistical test instead of the more commonly accepted two-tailed statistical test, and there was no security analysis done to determine the "robustness" of the results. After recreating his study with a two-tailed statistical test Dr. Muhlhausen found voter id laws largely do not have the claimed negative affect on voter turnout based on state to state comparisons and minority respondents in states that required photo id are just as likely to report voting as are minority respondents from states only requiring voters to say their name.

Another report supporting this claim is The Effects of Photographic Identification on Voter Turnout in Indiana: A County Level Analysis. This report was done by Jeffrey Milyo, a professor in the Truman School of Public Affairs and the department of economics at the University of Missouri and among other things is a Senior Fellow at the Cato Institute in Washington, D.C.⁶² In his report he examined the change in voter turnout across Indiana counties before and after the photo id law. What Milyo found was the over all statewide turnout increased by about two percentage points after photo id. He further concluded there was no consistent evidence that counties having higher percentages of minority, poor, elderly, or less educated populations suffer any reduction in voter turnout relative to other counties. In fact the estimated effect of photo id on turnout he found was positive for counties with a greater percentage of these types of populations. The only consistent and frequently significant effect Milyo found was there was a positive effect on turnout in counties with Democratic leaning voters.

Conversely, a report done in part of the CALTECH/MIT Voting Technology project called The Effect of Voter Identification Laws on Turnout is on of many disputing the previous claims. This paper, however, does state there still is little research on the effect of voter identification on registered voters.⁶³ In this paper when first looking at trends in the aggregate data, they found no evidence of reduced participation. However, using individual-level data from the Current Population Survey, they found the strictest form of voter identification requirements - combination requirements of presenting an identification card and positively matching one's signature with a signature either on file or on the id card, as well as with requirements to show picture id - have a negative impact on the participation of registered voters relative to the weakest requirement of just stating ones name. There was evidence found that the stricter statutes depress turnout to a greater extent for the less educated and lower income populations, but has no racial differences. Increasing the strength of requirements, on average, was found to decrease the probability of turning out the vote. In addition the study saw the stricter

requirements-requirements more than merely presenting a non-photo identification card-are significant negative burdens on voters, relative to a weaker requirement, such as merely signing a poll book.⁶⁴ This study concluded by stressing the need for further research, because there is so little information in current data on photo identification requirements and only with the passage of time will analysts be able to build up larger data bases with more information on the behavior of registered voters in statutes with different voter identification requirements.⁶⁵

Another study done by Timothy Vercellotti and David Anderson of Rutgers University examined the effects these varying requirements as well. This study, *Protecting the Franchise, or Restricting It? The Effects of Voter Identification Requirements on Turnout*, hypothesize as the level of proof becomes more costly to the voter, turnout declines. They test the hypotheses using aggregate measures of turnout at the state and county levels in the 2004 Presidential election, as well as individual-level data drawn from the Voter Supplement to the November 2004 Current Population Survey.⁶⁶

This study found when comparing requirements of a photo id vs. simply stating ones name voters in states requiring photo identification were 2.9 percent less likely to vote than voters in states where the requirement was to state ones name. Voters with less than a high school diploma, the probability of voting were 5.1 percent lower in states requiring photo identification than those stating only name. Interestingly, white voters were 3.7 percent less likely to vote in photo id state than those stating ones name.

When comparing the use of non-photo identification vs. stating ones name the predicted probability Hispanics would vote in states requiring non-photo id was about 10 percentage points lower than in states where only the name was given. The difference was about 6 percent for African-Americans and Asian-Americans and around 2 percent for white voters (the gap widened to 3.7 percent for white voters when comparing photo identification to simply stating one's name).

These reports were not the only ones citing similar findings presenting their case against voter photo id. Others included *Citizens Without Proof* from the Brennan Center for Justice at NYU School of Law, the brief for *AMICI CURIAE Current and Former Secretaries of State in Support of Petitioners in Crawford vs. Marion County*, *The Suppressing Effects of Voter ID Requirements on Naturalization and Political Participation* by John Logan and Jennifer Darrach of Brown University and *The Disenfranchisements of Latino, Black and Asian Voters* by Matt A. Barreto, Stephen Nuno and Gabriel Sanchez.

Justin Levitt, who is counsel for the Democracy Program at the Brennan Center for Justice, along with a panel of out of state guests talked to the committee on issues concerning the use of photo id at the polls. He cited excerpts from his report [The Truth About Fraud](#) to uphold his view of why proposed solutions of photo identification are not better than the problem presented. Mr. Levitt stated many see repeatedly claims of fraud happening which turn out to be clerical error or confusion rather than fraud. In his report

he gives such an example from a Washington Post article by Greg Palast titled *The Wrong Way to Fix the Vote*. An Alan J. Mandel who had passed away was alleged to have voted in 1998; upon further investigation, Alan J. Mandell (two "l"s) who was in fact very much alive and voting at the time, explained the local election workers simply checked the wrong name off of the voter list. Many assume, he continued, voter registration fraud leads to voter fraud when a vast majority of those cases reveal persons never attempt to vote as others.

Another issue brought up was that in order to get an identification one must show another form of identification. This costs money, money some do not have. Despite the claims that getting a voter id is un-burdensome, he stated, it is a common misconception everyone has id. He believes photo id would increase voter confidence for those who have id, but for those who do not confidence will diminish.

Tova Wang, a representative from Democracy Fellow on the out of state panel, stressed not one case brought up by the Department of Justice concerning voter fraud was of the type she believed would have been prevented by a voter photo identification requirement. When she was contracted by the Election Assistance Commission to do a report on election fraud and co-authored with a conservative co-author she found most fraud happens outside of the polling place and stressed the voter registration lists are the most important tools in removing possible fraudulent voters. She suggested the state should spend its energy on voter education and other alternatives to voter id; i.e. comparison of poll worker lists, poll worker training, enforcement of criminal laws currently in place in Texas, and giving law enforcement more resources. She also believes it is better to use signature verification as a form of fraud prevention.

She was not the only person bringing up the suggestion of signature verification as a means of election or voter fraud prevention. Opponents and proponents alike brought up the idea of a signature verification process in order to track voters of possible fraud. However, there was earlier testimony challenging these suggestions.

Dale Stobaugh, the HQ Section Manager of the Department of Public Safety's Questioned Document Crime Lab Section and someone who has had a long history in voter fraud cases, stated typically voter fraud cases are not good forensic cases. The reason being one does not have access to named individuals from whom the department can acquire from either a court order or a persons own submission known writing samples. The problem being going into a voter fraud case it is already known the victim did not sign the ballot or voter registration card. The burden is finding who did.

In Mr. Stobaugh's written testimony he stated, "Handwriting comparison is not the optimum method for routine personal identification, because we cannot access a known standard of writings of what often is an indeterminate number of unknown, unnamed voters and canvassers. If the investigation of a voter fraud case results in a need for forensic handwriting comparison, optimum results are developed only through adequate, comparable standards of this indeterminate number of subjects. This task is most often

exceedingly difficult to accomplish, primarily because you never know who all the actors are, especially without the biographical information as suggested.” Mr. Stobaugh suggested requiring a hand printed name and signature on each voter registration certificate issued. These samples would be maintained as a digital image for future forensic comparison.

The other issue he brought up against signature verification was hand writing is not like a finger print. Handwriting is not static, it changes constantly. When examining these cases a large amount of writing samples are needed to detect discrepancies. As Mr. Stobaugh stated, "Generally we don't feel that we should rely on handwriting for routine after the fact voter identification, it's too complicated and requires too much evidence and is too time consuming for this specific application." For investigative purposes he suggested on sight voter proof of identity or using on the spot comparisons such as thumbprints or identification.

Opponents of photo identification legislation brought up important concerns when considering this sort of law. Even if new photo ids are free, voters will have to apply for these ids at a Department of Public Safety facility. How many DPS facilities are there and are they easily accessible to voters? Another issue raised is once a photo id is required the state will run the risk of having to catch fraudulent ids. This in turn may require poll workers to acquire special fraudulent document training in order to properly differentiate between real and fraudulent ids. As stated by DPS representatives, the technology is available to produce very good fraudulent ids, and on the street there can be anywhere from one to several hundred fraudulent ids confiscated each night. (The committee had the pleasure of having two DPS officers from the Driver's License Division testify at the committee's Poll Worker Training hearing in regards to the proper training needed to identify fraudulent ids. A more thorough discussion of this topic is in Charge No. 4 of this report.)

The cost of the id is also a factor. In order to keep any legislation constitutional the proposed law would have to provide free ids to anyone who was to use it for the purposes of voting. According to DPS Drivers License Administrative Director Kim Smith, currently a state id costs 68 cents to produce. However, new enhancements are being made to the identification cards which will include many new state-of-the-art card security features making alteration and counterfeiting extremely difficult and was to be introduced in the fall of 2008. Once to the driver's license enhancements are in place the cost will jump to 83 cents per id. These are all concerns the legislature must take seriously and must thoroughly examine these issues in detail before enacting such a law.

Other important considerations were brought up by groups including the Mexican American Legal Defense and Education Fund (MALDEF), AARP, and the Coalition of Texans with Disabilities (CTD). Bryson Smith, who represented the CTD, saw concerns with the disabled community as a possible disenfranchisement toward the disabled if not done properly. The coalition does not want a photo id law to be exclusionary and pointed out to the committee what may be considered as an inconvenience to some may be

impossibility for others. Amanda Fredrickson, with the AARP expressed concerns that some of Texas' elderly may not have the proper forms of id required to vote if a photo id is enacted. Louis Figueroa (MALDEF) laid out similar concerns and believes if a photo id bill was not carried out properly it could disenfranchise voters on the basis that some may not have photo id or documents to prove their legal status. The individuals he mentioned who might have issues receiving these documents were children adopted or born abroad, legal immigrants, and those who were born at home with the assistance of midwives. Mr. Figueroa did say he could support a photo id bill allowing individuals to sign an affidavit indicating they are who they say they are, if those individuals do not have a photo id with them when they come to the polls.

During this hearing it was found there is fraud within Texas Elections, it may not be as blatant or as rampant as past instances cited within this charges background, but it does exist in pockets within the state. There are valid concerns raised from both sides of the photo id requirement battle. Opponents say there are hardly any documented cases of in person voting impersonation at the polls and in turn should be no need for photo id. Proponents like Tina Benkiser, who is a former election judge and poll worker and is also the current chairwoman of the Republican Party of Texas, believe just because it is not documented does not mean this type of in person fraud does not exist. She remarked, " In person voter is impossible to detect at the time it occurs if no photo id is required and it is rarely detected afterwards unless an election contest occurs."

Recommendations:

1. The committee would like the 81st Legislature to take in consideration the recommendations offered by the Sub-committee on Mail-in Ballot Integrity. As agreed by the whole committee there is mail-in ballot fraud and those issues do need to be addressed during the upcoming session.
2. Work with county officials to improve on and keep a standardized record keeping method for voter fraud cases and prosecutions. Currently while both large and small scale cases are chronicled there is still not a broad historical record of vote fraud investigation or prosecutions because of limited and a non-standardized record keeping methods.
3. The committee believes it is important to work with county election officials, the SOS, the AG's office to reassess current criminal penalties dealing with violations of the Election Code and the enforcement of these penalties and to possibly create more awareness to the laws the State of Texas has in place.
4. Look into the possibility of broadening the scope of the AG's office jurisdiction in Election Fraud cases in terms of man power and how cases are referred to their office.
5. The problem Texas faces with *politiqueras* or "vote brokers" is an issue needing to be addressed during the 81st Session. Currently in Texas Statute there are laws prohibiting

the practice of vote buying and the coercion of voters. However, these prohibitions only apply to offenses conducted in direct relation between "campaign workers" and the voter. The Committee believes the 81st Legislature should look into ways to prevent vote brokering, including revisions to current law and more effective enforcement. Any action taken by the Legislature must not discourage lawful efforts to increase participation in our elections.

6. Having found an issue with the lack of information regarding citizenship status, the committee believes the 81st Legislature should look into how the state can receive official citizen-ship lists from the Federal Government. The committee believes it is important for the Legislature to work with the SOS and other county election officials in carrying out this recommendation. The Legislature must proceed with caution when investigating this possibility so not to disenfranchise voters.

7. To mitigate the possibility of ineligible voters becoming registered or existing on voter registration lists the committee believes the Legislature should work with the Secretary of State's Office in detecting new ways to obtain more complete data for convicted felons and death records. The committee has concerns about relying solely on the records by DPS and the Texas Bureau of Vital Statistics. In order to achieve this goal without disenfranchising eligible voters the committee recommends the Legislature also look into producing uniform rules for maintaining voting lists i.e. providing public notice of pending maintenance of voter lists, preserving previously maintained voting lists and making cancellations within voter lists publicly available. These rules should be discussed at length with county election officials and the SOS for proper implementation. The committee also strongly urges the SOS to keep a historical data of felony convictions and death records in order to keep more complete voter registration records.

Charge No. 3

Monitor the continued implementation of the federal Help America Vote Act of 2002 by the Office of the Secretary of State, specifically including the implementation of The Texas Election Administration Management System to maintain voter registration records, administer elections and execute and report election results.

Background:

In response to the voting irregularities experienced during the 2000 federal elections, President Bush signed HR 3295, The Help America Vote Act (HAVA). This legislation created many new mandates for state and local governments and authorized approximately 3.86 billion dollars in federal funding to help states meet those mandates. To date Congress has appropriated just under 3.1 billion of the 3.86 billion in funds.⁶⁷

One of these mandates in particular required all states to put in place a centralized state wide voter registration system. This system in Texas is the Texas Elections Administrative Management system or TEAM. Deployment of this system first occurred in January of 2007.

This report will be broken down into two parts. The first part will cover the implementation and compliance of HAVA in the State of Texas. The second part of this report will specifically focus on the deployment of the TEAM system, its current status and its future development.

The committee staff met numerous times with the Secretary of States office to monitor both HAVA and TEAM, and received briefings keeping the committee up to date.

HAVA:

The primary allegations of voting irregularities experienced during the 2000 federal election concerned votes not being properly counted and voters being erroneously omitted from voter registration rolls, which resulted in eligible voters being turned away from the polls. To correct these irregularities HAVA set fourth new requirements for the states. Some of these requirements are:

1. Beginning 1/1/2006, the state and counties were required to work from a single, centralized, unique statewide voter registration list.
2. As of 1/1/2006, each polling place in the state must have at least one accessible voting system per polling place.

3. Instead of using the challenge voter process, voters whose names do not appear on the voter registration roll, may vote a provisional ballot, which is counted upon verification of the voter's eligibility after the Election Day polls close.
4. A free and confidential system was developed for provisional voters to check to determine if their provisional ballot was counted.
5. New requirements for electronic voting systems, and new voter educational requirements for counties using paper ballot, central count optical scan and punch card voting systems are required as of January 2006.
6. Federal Post Card Applications are now effective for a period of TWO general federal elections, instead of the calendar year.
7. The state filed a "State Plan" (which can be viewed at <http://www.sos.state.tx.us/elections/forms/stateplan0105.pdf>) explaining how the state and counties will meet the new requirements.
8. The state established and maintained a state-based administrative complaint process for voters who file a sworn complaint indicating their voting rights have been violated.
9. Title VII of HAVA, which improves the voting process for military personnel requires each state to designate a liaison to responsible for disseminating information to military voters (the SOS has designated itself). It also extends the valid time period for a military citizen to receive a ballot by mail from a single application and makes it incumbent upon the Secretary of Defense to make sure all military ballots are postmarked prior to mailing.

State Plan Budget and Expenditures to Date:

As required by HAVA the state has provided roughly 8.5 million dollars in matching funds to the 192 million dollars in federal funds it has received. Additionally the state has allocated some interest earned on the funds to enhance voter education efforts. The budget and financial activity in May 2007 for the purpose areas identified in the state plan are outlined in the Table below.⁶⁸

<u>PURPOSE AREA</u>	<u>BUDGET</u>	<u>EXPENDITURES</u>	<u>BALANCE</u>
SOS Administrative Expenses	\$8,724,260	\$1,773,144	\$6,951,116
Voter Registration Development and Operation	\$19,908,726	\$13,926,351	\$5,982,375
Grants to Counties for Voter Registration Compatibility	\$10,590,035	\$675,873	\$9,914,162
Grants to Counties for Election Conferences and Seminars	\$1,834,000	\$726,103	\$1,107,897
Grants to Counties for Voting Systems	\$143,645,596	\$129,517,714	\$14,127,882
Voter Education, Election Official and Poll Worker Training	\$9,437,504	\$7,218,728	\$2,218,776
TOTAL:	\$194,140,121	\$153,837,913	\$40,302,209

Voting System Standards

HAVA states each state and jurisdiction must comply with the requirements of Section 301 (Voting System Standards) on and after January 1, 2006.⁶⁹ The Secretary of States office ensured all 254 counties executed contracts for HAVA-compliant state certified voting systems prior to January 1, 2006 with an assurance all systems would be deployed before the first federal election of 2006, the 2006 March Primary. Each county could choose whatever system and combination of voting processes best suiting their needs. However, each county had to have a voting device in each polling location accessible to individuals with disabilities. This requirement could be easily met by having one direct record electronic (DRE) voting terminal within each polling location or an accessible ballot marking device. Beyond this requirement a county could choose any number of combinations. For example:

- * All electronic system, i.e., all DRE devices.
 - * Paper ballot reading devices, such as optical scan machines.
 - * Hand counted paper ballots or counted electronically at a central location.
- However, these systems require that the county meet various voter education obligations regarding their rights under Title III of HAVA, i.e. additional voter education on the effects of over votes.

Despite the crucial time constraints Texas was able to hold a successful March Primary in 2006. This election was followed by a successful mid-term election. The most recent 2008 Primary, which had the highest turnout in Texas Primary history showed the voting systems used throughout the state, managed the volume with efficiency and accuracy while maintaining HAVA compliance.⁷⁰

Voter Education and Election Worker Training:

Voter Education:

Since the 2006 Gubernatorial Election was the first election cycle with all the new HAVA requirements in place the Office of the Secretary of State wanted to make sure the people of Texas were well informed of the changes. The Secretary of State launched a state wide voter education program called VOTEXAS with the goal to teach Texans about the new voting systems, inform them of their voting rights and reach out to the different communities affected by HAVA.

VOTEXAS is an awareness raising program consisting of TV, radio, print, website, and an experimental marketing vehicle to drive people to the VOTEXAS website (<http://www.votexas.org>) or the 800 number 1-800-252-VOTE (8683) so those people could become better educated concerning Texas elections. The website in particular includes information on how to register; polling locations; FAQs; and interactive features on how to use the electronic voting equipment. Between the launch of the program in

January 2006 through the November election, the website received more than 200,000 visits.

As part of the grass roots outreach, there was a thirty-three foot leased tour bus traveling across the state demonstrating the electronic voting equipment. This bus toured to 146 outreach events and generated nearly 500 media stories.

VOTEXAS wanted to reach out to Texans with disabilities to make sure they knew voting in Texas would become more accessible to them. To make this goal a reality a large part of the 2006 initiative was done in conjunction with the Coalition of Texans with Disabilities. In a statewide survey, 87% of those questioned living with a disability said voting is now easier for them.⁷¹

Because of the success achieved through the 2006 initiative, former Secretary of State, Phil Wilson launched a revamped voter education program called VOTEXAS-*You Count. Texas Makes Sure.* earlier in 2008. This program is geared toward the most recent Presidential Election cycle and is focused on educating Texans about their rights as a voter and getting back to the basics of registration and the voting process.

The Secretary's office improved the VOTEXAS website and created revised comprehensive brochures in an effort to make Texans better prepared for the upcoming election. Leading up to the March Primary the VOTEXAS website received more than 1 million hits in a six week timeframe. So far the VOTEXAS program has used a majority of the education and training funds provided by HAVA.

The Office of the Secretary of State plans to continue its outreach through personal appearances, working with election officials, businesses, and civic organizations across the state, and through media sources leading up to the November 4, 2008 general election.⁷²

Election Worker Training:

Before HAVA, the Office of the Secretary of State by law was required to adopt standards of training election workers; develop materials for a standardized training curriculum; and distribute the materials as necessary. With HAVA came additional training needs. In accordance to the new law the Secretary of State contracted with a company to create an online poll/election worker training program, which consists of two components. The first component instructs election workers of the polling place rules and rules on qualifying voters while the second consists of training on the new, HAVA-mandated voting machines. The training is user interactive with voice features and has a testing element to ensure election officials understand election terminology and the lessons before being able to move on to another chapter. This training program is available 24 hours a day and is free of charge.

Texas is the only state to offer a statewide online training program of this kind, but this

program is not intended to replace the personal county-level training. In 2006, the state launched its first iteration of the system. By 2008, the number of election workers trained had doubled with 7,451 election workers registered on the system, 2,881 utilized the course and 2,171 successfully completed the course.

The SOS has recently contracted with the same vendor who created the online training program to develop voting system simulation videos for each of the certified voting systems in the state. The videos will encompass the setup and operation of the voting equipment at the polling location and will be incorporated into the online training. The Secretary of State's Office anticipates this addition to the online training will increase usage quite significantly and is slated to be available prior to the 2008 presidential election.⁷³

Federal Audit of Texas' Administration of the HAVA Funds:

During the summer of 2006, the Election Assistance Commission's (EAC) Inspector General (IG) conducted an audit of Texas' administration of the funds received from HAVA. Texas was the first state to receive a financial audit of these funds. The audit concluded the state must instruct the counties regarding the calculation, reporting and use of program income.

- Program income is defined as gross income received from a grant-supported activity during the grant period and includes items such as fees from the use or rental of real or personal property acquired with grant funds. In the case of the HAVA program, the grant-supported activity is the acquisition of voting systems.

Aware of the requirement the Secretary of State's office was awaiting guidance from the EAC both prior to the audit as well as during the resolution of the audit. One determination the SOS was awaiting concerned whether the EAC would allow the state to deduct costs incurred as a result of generating the program income (i.e., costs absorbed by the county attributable to providing the HAVA-funded goods and services to the local entities not charged to the local entities nor financed with HAVA funds).

After careful analysis of the logistics involved in calculating and deducting incidental costs as well as potential consequences, the Secretary of State opted to report gross program income. Reporting gross program income carries less risk because it requires fewer calculations, analyses, less documentation, and there is no penalty for over-reporting. However, if program income is underreported, that amount must be returned to the Election Improvement Fund established by the state in response to HAVA.

The Secretary of State's Office has since provided guidance to the counties and has collected the necessary data to report to the EAC. In January 2008, the EAC issued a letter to the SOS stating, "...Texas has established an adequate system to determine whether counties have realized any program income. This action resolves the audit report."⁷⁴

Additional HAVA Funding:

In 2008, the United States Congress appropriated the third and, presumably, final Requirements Payments to the states. Texas qualifies for \$8,267,155, which includes state matching funds of \$413,358. The Secretary of State's Office is working with state officials to secure the necessary match. The SOS anticipates amending Texas' HAVA state plan by consolidating the budget to more accurately reflect the funding levels for each purpose area identified in the plan. This additional funding will likely be used to enhance voter registration development and operation, the voter education programs, and the election worker training programs.⁷⁵

TEAM:

Section 303 of the Help America Vote Act (HAVA) required every state to develop and maintain a statewide, centralized, interactive computerized data system housing the name and registration information of every legally registered voter in that state.⁷⁶ The Secretary of State complied with HAVA by contracting with IBM and Hart Intercivic in October of 2004 to create the Texas Election Administration Management (TEAM) system. TEAM was first deployed in January of 2007 and like most new projects there were many bugs needing to be worked out. Despite much criticism of TEAM's initial performance, former Secretary of State Phil Wilson lead the charge to make sure TEAM became an efficient and well run system.

Working closely with the counties and the State Auditors Office, the Secretary of State's Office was able to pinpoint problem areas needing improvement and with the help of Nilior, Inc. (a systems internals expert) they were able to test TEAM in real world scenarios, pushing the system to its limits. The systems internals experts were able to tune and refine TEAM whilst testing, remedying problems as they emerged.

This part of the report will cover the State Auditor's Report on TEAM, the TEAM Readiness Validation Test, and how TEAM performed during the 2008 Primary. It will also touch on the different duties the TEAM system provides, the TEAM Advisory Group (TAG), and will finally look at what the future holds for TEAM.

Texas State Auditor's Report on TEAM:

During its first year, TEAM's performance was unacceptable. The State Auditor's Office (SAO) performed an investigation on the TEAM system and presented its final report in November 2007. The report concluded the Secretary of State's Office should improve its processes and controls within the TEAM system.

After comparing information from TEAM to data obtained from the Department of Criminal Justice and the Bureau of Vital Statistics, the SAO identified 49,049 (0.4 percent) of 12,374,114 registered voters who may have been ineligible to vote. The

auditor's office counted 23,114 possible felons, 23,576 voters who may have been deceased, and 2,359 duplicate voters. It is important to note, auditors did not identify any instances in which potentially ineligible voters actually voted during the May 12, 2007 special election. However, the SOS office does not retain a complete history of death and felon records reported during previous periods, so the voting history data in TEAM system was incomplete at the time of the audit.⁷⁷

Regarding access and security controls of the TEAM system, the auditor's office felt the SOS needed to implement additional controls to ensure it adequately protects voter registration information and the TEAM system from unauthorized access. Auditors did not identify any breaches of security, but they did notice weaknesses that should be addressed.⁷⁸

Performance testing done by an IBM contractor on behalf of the Secretary of State and statements from county officials at the time of the audit indicated while TEAM's availability was there, its performance was not. Of the 204 county voter registration offices, 52% said TEAM did not allow them to do their job effectively. To add insult to injury, for 6 of 10 benchmarks required by the Secretary of State, the TEAM system was slower than its non HAVA-compliant predecessor, the Texas Voter Registration System (TVRS). The SAO acknowledged the Secretary of State Office was in the process of remedying the problems associated with TEAM, but did not verify the results of the performance test.⁷⁹

The Secretary of State's Office was not pleased with TEAM's initial performance and largely agreed with each of the recommendations given to them by the SAO. The SOS agreed the current processes within TEAM should be reassessed to determine if there are better ways to identify ineligible voters, but also stressed the importance of making sure valid and eligible voters are not removed. The SOS office also reminded the SAO any changes made in how Texas conducts its electoral process will be subject to the U.S. Department of Justice for preclearance and any changes adopted must take this process into consideration.⁸⁰

The Secretary of State agreed the performance of TEAM needed to be improved, and agreed it should strengthen its procedures to ensure TEAM is further protected from external or internal threats. The SOS stressed that improvements on security can and will be made.

One immediate remedy was in response to the 2,359 duplicate voters. This was caused by a defect within the TEAM system, which was identified and fixed immediately.⁸¹ Another issue counties had was response time while using TEAM. After visiting some of the counties first hand, the Secretary of State's Office traced user complaints to their county's under-spec equipment or to the slower local networks. HAVA funds were then directed to improving some counties' IT environments specific to the TEAM system, greatly improving response time.⁸²

TEAM Readiness Validation Test:

At its first launch TEAM would bog down with less than 100 users online, hardly acceptable for a system required to support the State of Texas. To begin the mending process, the suppliers launched a performance improvement sub-project, at their own expense, to correct the problems. They engaged a systems internals expert (Nilior, Inc.) to tune the system over several months from April through October 2007.

In July of 2007 a Readiness Validation Test was performed in order to stress test the system. To prepare for the test dozens of real county users were asked to retain normal work loads usually entered into the TEAM system until the test was to be executed. The county users entering their retained workloads coupled with simulated user activity stressed the system as it would under the expected November election loads.⁸³

As Ann McGeehan (Director of Elections for the Secretary of State's Office) illustrated during the August 15, 2007 Election Law Seminar, there were four main objectives to this Readiness Validation Test.

1. To understand the TEAM limitations under an increased load.
2. To identify, analyze, and prioritize observed anomalies for resolution.
3. To run a set of real-world scenarios, simulating an election type load, to capture and analyze key system parameters.
4. To rerun the November 2006 TVRS/TEAM benchmark tests with the same load and compare results.

Each one of these objectives was met and with the systems internals experts on site while the test was being performed, they were able to pinpoint and correct anomalies, if they happened, almost immediately. The benchmark tests against the former TVRS system were rerun. Results of all testing were overall good with few issues noted for further refinements.

The table on the following page shows a summary sample for **Add**, **Cancel**, and **Edit** voter transactions with the results for the original TEAM November 2006 benchmark (pre-launch) and the August 2007 (post-improvement sub-project) benchmark runs.⁸⁴

Test ID	Statistic	November 2006	August 2007	Faster by x
3.1.3 ADD	count	20	20	
	Average (secs)	9.17	1.97	4.7
	stdev	6.20	0.84	
	confidence	2.72	0.37	
	maximum	18.35	3.88	4.7
	minimum	1.60	1.39	1.2
3.2.2 CANCEL	count	12	14	
	Average (secs)	4.79	1.83	2.6
	stdev	0.35	0.15	
	confidence	0.20	0.08	
	maximum	5.35	2.29	2.3
	minimum	4.28	1.66	2.6
3.3.1 EDIT	count	15	14	
	Average (secs)	4.17	1.91	2.2
	stdev	1.26	0.38	
	confidence	0.64	0.20	
	maximum	6.54	2.57	2.5
	minimum	2.19	1.50	1.5

In all cases, performance improved from the November 2006 benchmark tests. Performance continued to improve and the system's stability continued to increase each month past August 2007 as further improvements were implemented.

TEAM During the 2008 March Primary:

The difference between the May 2007 election and the 2008 March primary was like night and day. The following statistics during the March Primary clearly shows the vast improvements of the TEAM system.

March 4, 2008 Texas Primary Election (2/12 - 3/4)

- There were 12,841,576 eligible voters in the TEAM database.
- Total Voter turnout (early voting + election day) for this election was 4,237,720 or 33%
- Total Voter turnout on election day was 2,394,918 or 18.6%
- The SOS had 672,585 page views on their websites on Election Day, with 72,463 individual visitors.
- The SOS had 384,702 public users searching on either their registration or polling place on election day (16 out of every 100 election day voters did a search on the website)
- 3000+ reports were produced in the TEAM System for counties, in the weeks leading up to the election
- The SOS produced 720 Official Voting List reports, in one day (Friday before election, after early voting ended - the most the Secretary of State's office has ever produced in one day)

- The SOS processed 637,000 voter transactions through their offline county interface leading up to the election
- The SOS's peak county user count on Election Day was 417 (the most they have ever had live on the system)
- The SOS processed 45,000+ new voter certificates leading up to the election
- The SOS did 96,699 searches by county users on Election Day (voter lookups, etc.)

Overall, the production TEAM system in the SOS IT environment performed very well operationally for the March 2008 Primary Elections, which experienced unusually heavy demands due to the very tight Democratic race for President.⁸⁵

Components of TEAM:

When the Secretary of State acquired the system, it was envisioned the system would include features intricately associated with the centralized data system for voter registration information, including supporting election management, election night reporting, ballot certification and canvassing, and county jury wheel needs. New technologies such as document imaging and Geographic Information System components will also become available. Below is a general description of the key features of TEAM:⁸⁶

Voter Registration

- Validation of voter information
- Availability of GIS mapping and document imaging
- Statewide search capability for all county officials
- State-of-the-art reporting and query tools

Election Management

- Early voting management
- Reduced paperwork for counties and the state
- Polling location and poll worker management

Jury Wheel

- Capability to create jury summons, jury lists, and notices
- Capability to track jurors
- Capability to track jury payments and provide for donation of payment to charity

TEAM Advisory Group (TAG):

TAG was formed in March 2007 to provide a forum of information exchange amongst the

Office of the Secretary of State Elections Division, the county users of the system, and the suppliers of the system. The group is made up of county officials and meets regularly to review the past, present, and future of TEAM, and to advise the Office of the Secretary of State's Elections Division about matters concerning the system.

TAG provides user perspectives on form, fit, function, and features of the TEAM system, recommends priorities for enhancements to appear in future TEAM releases, represents their respective organizations, and assists the State with identifying problems. Since its formation, TAG has held eight meetings. Recent comments from the TAG membership have been generally positive regarding TEAM. The County Representatives making up TAG are as follows:⁸⁷

COUNTY	NAME	TITLE	E-mail	Address	City	Zip
Brazoria	Ro'Vin Garrett	Tax Assessor-Collector	roving@brazoria-county.com	111 E. Locust, Ste 200	Angleton	77515
Comal	Sherman Krause	Tax Assessor-Collector	tofswk@co.comal.tx.us	205 N Seguin Street	New Braunfels	78130
Fannin	Tammy Rich	County Clerk	tjrich@fanninco.net	101 E Sam Rayburn, #102	Bonham	75418
Galveston	Cheryl E. Johnson	Tax Assessor-Collector	cheryl.johnson@co.galveston.tx.us	PO BOX 1169	Galveston	77553
Hays	Joyce Cowan	Elections Administrator	joyce@co.hays.tx.us	401-C Broadway Street	San Marcos	78666-7751
Kenedy	Roy Ruiz	Elections Administrator	kenedyear131@hotmail.com	P.O. Box 243	Sarita	78385
Midland	Ruth Sloan	Elections Administrator	ruth_sloan@co.midland.tx.us	PO BOX 3434	Midland	79702
Nueces	Ramiro "Ronnie" Canales	Tax Assessor-Collector	ronnie.canales@co.nueces.tx.us	901 Leopard, Suite 301	Corpus Christi	78401
Potter	Julie Smith	County Clerk	juliesmith@co.potter.tx.us	PO BOX 9638	Amarillo	79105
Polk	Marion A. "Bid" Smith	Voter Registrar	marion.smith@co.polk.tx.us	416 N Washington	Livingston	77351
Victoria	George Matthews	Elections Administrator	gmatthews@vctx.org	111 N Glass	Victoria	77901

Future of TEAM:

TEAM has and will continue to be implemented in phases. These releases are outlined below:

TEAM r2 – Enhanced VR Release – 2009

- Application functions based on product version 4.0
- Enhanced Public Voter Inquiry Website
- Basic GIS (Graphical Information System) reporting features

TEAM r3 – VR & EM Release – 2010

- Application functions based on product version 5.0
- Enhanced GIS (Graphical Information System) reporting features
- Election Management (including Election Night Reporting, State Ballot Definition, & Candidate Filing components)
- Integrated Document Imaging Enhancements
- Imaged Signatures from DPS

Recommendations:

The Committee will continue to work with the Secretary of State's Office to make sure the implementation of HAVA is continually met. As it stands, Texas is in full compliance with the current rules and regulations of HAVA and the Committee has no recommendations at this time.

The Committee applauds the work the Secretary of State's Office did this past year regarding TEAM. The Secretary of State's Office received much criticism on the new system when it was first released in 2007. They reacted quickly in resolving the problems associated with TEAM and were able to work out many of the bugs in the system. To-date they have been continually working on further improving TEAM. With help from TAG and the State Auditor's Office, the committee believes the Secretary of State's Office has TEAM well under control, and if a problem does arise they will remedy it as quick as practical.

One recommendation the committee does have is in regards to the incomplete data mentioned in the SAO report. The committee recommends the Secretary of State's Office keep a more complete voting history on hand of death and felon records reported during previous periods, if they have not already begun to do so. The committee will work with the Secretary of State's Office with this matter administratively first in order to avoid having to file legislation.

Charge No. 4

Study poll worker recruitment and training in Texas, and suggest possible statutory improvements.

Background:

Poll workers play a pivotal role in elections throughout the entire United States. For every election, a massive one-day work force must be recruited, trained, organized and mobilized. These workers will total around 2 million per federal election and work days exceeding 12 hours.⁸⁸ The pay is minimum wage or slightly higher and most of the workers who perform this job see it as a duty to their state and their country. On Election Day, it is ultimately up the poll workers to oversee the running of our elections. Whether or not an election is run smoothly can be directly correlated to the kind of training poll workers receive and with the kind of service the poll workers are able to provide the voters. This makes it imperative that poll workers receive the best training and that experienced poll workers come back to run subsequent elections.

Throughout the United States, these poll workers are becoming harder and harder to recruit. Low pay and long hours, coupled with a few bad experiences, are just some of the factors keeping good poll workers from returning or new ones from becoming involved in the election process. Another factor becoming a problem is according to the U.S. Election Assistance Commission, the average age of today's poll workers is 72. Without new poll workers to fill their shoes, Election Day is sure to reach crisis mode. As Dana Debeauvoir (Travis County Clerk) pointed out in the committee's hearing, Travis County has never had 100% recruiting levels in the over the 21 years she has worked there. In Texas, the rules governing the primary elections and general elections are not parallel. The many steps involved in selecting poll workers sometimes leave county election officials limited time to train poll workers. These dilemmas leave the question in everyone's mind: What can be done?

This charge clearly recognizes the importance of poll worker training, recruitment, and retention. The Committee held a hearing in April 2008 and invited many county election officials, representing both large and small counties, poll workers, and advocacy groups to come discuss the issues they face every election and to provide solutions increasing poll worker recruitment and retention as well as improving overall poll worker training. The committee also had the honor of hosting Commissioner Gracia Hillman of the United States Elections Assistance Commission (EAC).

In this report, the committee will look at poll worker training in general, how the Secretary of State is involved with the training, what materials are available, and what is done on a local level. The Texas Department of Public Safety (DPS) also discussed with the committee what it would take to incorporate fraudulent document training for poll workers if a photo ID requirement was enacted in the State of Texas. This report covers the difficulties county election officials are faced with each election regarding training, recruitment, and retention. Once the problem areas are identified, considered the report will explore alternative methods Texas may be able to use in the recruitment and retention of poll workers. Finally, the committee will present recommendations to the 81st Legislature.

Training:

The State:

Training is a vital part of the modern poll worker. With provisional ballots, audio/sip-puff access for disabled voters, changing voter ID requirements in many states, and complex electronic voting systems, the job of a poll worker is getting harder.⁸⁹ Without the proper training and proper tools for this training, poll workers cannot run an election successfully. Commissioner Hillman shared with the Committee some of the resources available to the states from the EAC. Texas, the committee found, has a very full "toolbox" of resources available for properly training poll workers.

Commissioner Hillman expressed her feelings on poll worker training, "Because accommodations should be provided to all voters, it creates a tall order for the poll workers. These poll workers directly reflect the electorate and have the opportunity to enhance the voting experience. Poll workers provide an important community service and deserve the very best training and work environment that we can provide them." The EAC has produced and distributed many materials to state and local election officials throughout the nation. Several manuals available include: *Successful Practices for Poll Worker Recruitment, Training and Retention, A Guidebook for Recruiting College Poll Workers, A Compendium for State Poll Worker Requirements.* The EAC has also developed two Quick Start Management Guides on poll workers and on polling places and vote centers. All these materials were developed, Commission Hillman pointed out, with input from election officials and other experts who have found creative ways to address poll worker recruitment, training, and retention.

Kim Kizer, the Director of Education and Outreach for the Secretary of State's Office (SOS), addressed the committee in regard to the role the SOS plays in training Texas poll workers. By statute, the Secretary of State adopts the standards for training and is responsible for developing the materials to standardize a training curriculum for poll workers statewide. The SOS is also charged with delivering these materials and adopting the training standards.

Ms. Kizer went over numerous methods of training the SOS provides. First, they have always provided face-to-face training, regional training, satellite training, or training through VHS or DVD. The SOS mails out training information to all political subdivisions, which are allowed to keep this training information as teaching aides. Various written materials are also provided for political subdivisions and include handbooks for election judges and election clerks on the procedures of early voting and qualifying voters on Election Day, as well as Election Worker training guides.

The newest form of training the SOS has to offer is quite unique. Texas has, to-date, the only statewide web-based On Line Poll Worker Training in the country. This format of training is available 24 hours a day, 7 days a week and was developed through talking with elections officials and poll workers. It is important to stress, the SOS does not feel this is a substitute for face-to-face training, but is merely an enhancement or "another tool in the tool box" as Kim Kizer so eloquently put it. An additional feature the online training has is a disabilities chapter. The SOS worked closely with the Coalition of Texans with Disabilities to create this chapter, for

the purpose of training poll workers on the etiquette one should use when assisting a voter with disabilities.

A survey prepared by the Secretary of State found nearly half of the poll workers have taken an online course before and 1 out of 4 is new to the program. At the end of the course, the poll worker is given a test and has two opportunities to pass this test. To pass, one must receive at least 70% or higher. If after the second time the poll worker does not pass, the poll worker will receive instructions to contact the political subdivision hiring them. Poll workers passing the test will be able to print out a certificate of completion. This certificate is then taken to the party chairs or entity hiring the poll workers proving the poll worker has in fact taken the course. Last year, of the 7,451 poll workers registered for the primary election, 2,881 of these poll workers utilized the course, 2,171 completed the course and passed, and 710 poll workers began the course without finishing. Interestingly, Ms. Kizer mentioned when the trainees were asked if they were satisfied, 70% said they were satisfied and nearly 70% of those respondents were 50 years old or older.

The online training is a living document, as Ms. Kizer explained, for the SOS. The SOS is always getting feedback from participating poll workers and is continually making enhancements. Polling trainees and getting feedback allows the SOS to address issues that may be difficult for the trainees to understand, and allows the SOS to add more information to the training program where necessary if users feel they need more training in a particular area. Trainees can even call or email the help desk for questions.

Where is this new program going? Response to the online poll worker training has been good and growing with each election. With any new program (especially with new technology) growth is slow at first, but the SOS has steadily increased the number of participants with each election since the launch in November of 2007 (159 counties of the 254 have utilized the training; 2,887 election workers have been trained.) In fact, the SOS has doubled the number of poll workers using the online training since the launch.

With changing technology and more adult distance learning, it was a natural progression to develop online training for the convenience of the poll worker. With higher costs of fuel and expenses to the county to conduct training, this is a very economical way to reach a potentially new audience in the poll worker arena. The SOS is hopeful the new rollout for this November 4, 2008 General Election, which includes a voting system simulation training component, will increase the numbers of users dramatically. This new technology will show the poll worker (1) how to set up the equipment at the polling place, (2) how to get the equipment ready for voters, and (3) at the close of the polls, procedures for transmitting the election results to the election authority. Additional features have been added to this online training are more robust management features for the Administrator (Learning Management System), and an online scheduler, which will allow the county to post all training classes on line, and allow the poll workers to register for those classes.

The SOS is optimistic about the training opportunities for Texas poll workers. Their hope is by providing the training in convenient, comprehensive mediums; they will not only be able to assist the counties in retention, but in recruitment as well.

On a Local Level:

Although state law requires the SOS to adopt standards and develop materials for training poll workers, most of the actual training of these poll workers is conducted on the local level. There are many great training programs county election officials provide. All of the county clerks and election administrators know the importance of face-to-face training. Bruce Sherbet of Dallas County (who has conducted poll worker training since 1987 in Dallas County as an Elections Administrator) shared with the committee in written testimony that he not only provides and stresses face-to-face training; he also takes advantage of the many other tools available for training and applies many supplementary tools to his training. These tools include the SOS Online Training Program, training labs, and additional website training tools the Dallas County Election Department website offers. He concluded the key to any successful election is directly tied to how well the poll workers are trained.

Despite the best efforts our county election officials put into training, there are inconsistencies in state law making it difficult for our poll workers to receive a superior training preparing them at the polls.

One issue is county election officials do not select poll workers. The problem is the county election officials may not even know who the election workers are until 20 days prior to the election. This gives our county election official just enough time to cover the basics of working at the polls. As pointed out in testimony by our county election officials; current demands are such there is no time for things like customer service training etc. Elections have become increasingly complex and training has grown longer to compensate for the additional information; but with time constraints forced on our county election officials it is difficult for them to make the proper bench marks.

Don Alexander (Denton County Election Administrator) for instance will have a room of about 400 people to take a two-hour course. As he pointed out there are 1.5 voters every minute on Election Day, and you can not send a new person out there who is not trained and does not have the experience to cope with the crowds. When it comes to training poll workers, time is what is needed most in order to properly train poll workers. Texas' county election officials have the tools to train our poll workers, but if they do not have the time then they are limited on what can be taught.

Another inconsistency is who can train poll workers. Although the Election Code states the county must provide one or more training sessions, the county is not the only one who can provide training. A governing body of a political subdivision other than a county may provide training, and the Election Code also states the county executive committee of a political party must provide training as well. A local political subdivision or a county executive committee may conduct its training jointly, but is not required to do so.⁹⁰ As the committee found out during testimony, the political parties will contract with the county election officials to train the poll workers, but political parties sometimes will provide additional training or train the poll workers themselves.

Having this many options open leaves training inconsistent, not only among counties, but also

among precincts. The materials used are standardized, but training is not. At certain levels, it is of course impossible for a smaller county to provide the extra support a large county such as Dallas County can provide its poll workers. It would benefit the state, however, if there were more consistency within the Election Code concerning poll worker training.

Thinking in the Future:

What could we see in the future? With the possibility of a photo voter identification requirement being enacted in the State of Texas, the committee had Assistant Chief Robert Burroughs and Captain Robert Sells from the Department of Public Safety's' (DPS) drivers' license division come and discuss what it would take to train poll workers for fraudulent document identification.

They both agreed the one hour course DPS offers would be adaptable and sufficient enough for poll workers. When asked if it was difficult to differentiate even after the 24-hour course between fraudulent and real drivers licenses, Captain Sells responded by saying, "No, once you get some hands-on training, then they are easy to spot. Employees at DPS can even spot them when they are in line."

Sells informed the committee a person with limited or no training could be able to tell what a fake ID looked like. DPS has found the best defense against fraudulent IDs is high quality licenses or documents. So what does one look for when looking for a fraudulent ID? There is security features used in Texas DPS looks for when determining between real and fake IDs. They look at the card stalk, the laminate, and how the picture feels. The card stalk for instance is a credit card style, but very pliable, also if you were to hold a UV light to a driver's license, the Texas would glow.

The gentlemen from DPS explained the time it takes for a trained person to differentiate between a real and a fake ID is less than two minutes; less than five minutes for the less trained. DPS mentioned if you were to use an ID for voter identification, it would be beneficial to use a state ID. Because all types of ID are susceptible to fraud, you would want to make it more restrictive on the type of IDs you allowed. The state driver's license and identification card already have built-in security devices other forms of ID do not.

One thing needing to be considered is there are only 12 people in the State of Texas certified to teach the fraudulent document training. This would spread training very thin not only for our election workers, but for our law enforcement officials. If this type of training were to transpire, the committee would need to look into whether or not staff of the Secretary of State's Office or other county election officials could be certified to teach a fraudulent documents course, therefore allowing the proper access to election workers. Adding this to the already numerous things election workers must train for would require more time be allowed for training. This of course is still just speculation, but is something the Legislature must consider when considering the use of photo IDs at the polls.

Overcoming Difficulties:

There were many key issues brought to the committee's attention during the hearing affecting poll worker recruitment and retention. These issues were agreed upon across the board by both

large and small counties. Pay and the inconsistency between laws governing general elections and primary elections were heard the loudest amongst our county election officials. Other conflicts persisting are: recruiting on Tuesdays; allowing political parties 20 days prior to the election to turn in the list of poll workers; the growing complexity of elections and the increased levels of responsibility without giving more time for training; the overall length of Election Day; no shows; and current demands making it impossible for additional skill training like customer service training. These issues, coupled with the inconsistencies imbedded in the Election Code, work against county election officials making it difficult for anyone to recruit and retain poll workers. During the hearing, the committee talked in-depth with the State's county election officials regarding these issues and discussed with them how these inconsistencies in law affect the recruitment and retention of poll workers.

Representative Farias asked the county election officials, "What would it take to retain the poll workers?" The most common response to this question was decent pay and a positive experience. Dana Debeauvoir, Travis County Clerk, told the Committee she has 560,000 registered voters in Travis County with approximately 200 precincts, and when she asked her precinct whether or not they had difficulty recruiting and why, of the precincts responding, 49% cited low pay as a reason.

Don Alexander (Election Administrator of Denton County) pointed out one of the main problems in retention of poll workers, especially in the primary, is due to state laws. Primary workers are only limited to seven dollars an hour, when some counties, like Denton, pay more during the general election.

Statutes concerning pay rate is inconsistent between the general election and primary elections. In the general election a poll worker is entitled to an hourly wage decided by the governing authority, which must at least be the federal minimum wage, while working a primary or a primary runoff election a poll worker receives only seven dollars an hour.⁹¹ This inconsistency hurts Texas when recruiting poll workers for primary elections. As cited by our county election official, in a general election someone may make \$9.25 an hour and then are asked to turn around and work a primary election for \$7 an hour. Also, during a presidential primary election, there is usually more working hours. Ms. Debeauvoir mentioned primaries limit the number of hours a poll worker is allowed to be paid. A poll worker may only receive pay for 14 hours of work instead of the real time it takes. As she pointed out, even if you are really sharp after a 14 hour day it will take 30 or 45 minutes just to close the polls, if there are not any lines. This of course could be remedied with allowing poll workers to get paid for the actual time it takes to work at and close the polls.

When asked whether or not the primary fund for appropriation covers all the needs for the individual counties, there was laughter amongst the county election officials, followed by a polite no. The appropriations, they pointed out, do not just cover salary expenses, but are also used for the programs implemented in conjunction with running the primary, i.e. training etc. As Ms. Debeauvoir explained, "What we are doing unintentionally by keeping these laws so inconsistent, is leaving the perception that one election is less important than the other."

Representative Burnam asked if the state needed to make the pay a fixed rate, for example ten dollars. The county election officials believed doing so would not fix any problems, because

some small counties might have a problem coming up with the money to provide for a fixed rate. They believed the primary election pay grade should be more in line with the general election pay grade. It was believed the way the law is set up is fair, letting the pay scale be up to the jurisdictions.

In Bexar County and Hidalgo County for instance, the county commissioner courts settled on what is called a living wage. It is what temporary county workers are paid. As the living wage gets raised, the pay rises accordingly. Allowing the counties to set their own pay rate would give them the discretion they need to be able to pay poll workers, according to a particular county's budget.

Two other items having to deal with pay was training and pay for dropping off election materials at the end of an election. State law entitles an election judge or clerk to a flat rate of \$25 for delivering election records, keys to ballot boxes or other election equipment, and dissemination of election supplies after an election.⁹² With increasing fuel costs and long distances to be traveled in Texas, this rate seems hardly worth the effort. The other pay issue is training. Only election workers in charge of the early voting polling places are eligible for compensation for training.

Another inconsistency in the law is in relation to recruiting poll workers and training them. The Texas Election Code is clear on who is to provide the materials and set the standards for training poll workers. It is inconsistent on who is supposed to train and recruit the poll workers.

The problem is the Election Administrators and County Clerks do not have access to the poll workers, the appointed presiding judges and alternative judges pick their own clerks. Section 32.031 of the Election Code provides the presiding judge of each election precinct appoints the election clerks (poll workers) for each election. The number of poll workers to be appointed is determined by the authority appointing the presiding judge. The law is also inconsistent on who the authority is who appoints the presiding judges. Authorities appointing presiding judges are different for county elections, elections for political subdivisions and for primary elections. In fact, in other elections ordered by counties the authority ordering the election must appoint the election judge.⁹³ So there are at least three different ways to appoint presiding judges for elections county election officials must keep straight.

These poll workers, if possible, must be selected from different political parties. A list is submitted to the presiding judge no later than the 25th day before a general election or not later than the 10th day before a special election of at least two persons who are eligible for appointment by the county chair of the political party whose candidate for governor received the highest or second highest number of votes in the county during the most recent gubernatorial election. After the list is received the presiding judge has until five days after he received the list to turn it over to the local election official. This makes it 20 days prior to the election when an election official receives the list.⁹⁴

What tends to happen as mentioned during testimony is the county election official will have to find poll workers at the last moment when precinct judges are unable to. Allowing political parties to provide names 20 days prior to Election Day does not provide county election officials sufficient time to recruit and train poll workers when positions are unfilled.

Don Alexander (Election Administrator of Denton County) illustrated to the committee the difficulties he goes through each election. As Mr. Alexander said, “Just because it looks good on paper, doesn’t mean it will work that way.”

Mr. Alexander explained what really happens when recruiting poll workers. He first will send a letter to his party chairs in May telling them how many poll workers he will need for the following year. The parties have until the first of July to reply. Once the parties respond, Mr. Alexander takes the list of names before the commissioners’ court, who then appoints those people as election clerks. Next Mr. Alexander sends a letter to each person congratulating them on their recent appointment. He says he will then get a call from appointed clerks asking him what the heck he is talking about.

Sometimes it will be up to 48 hours before an election and Mr. Alexander will be "shotgun training" the new workers. As he explained, “People see what they are going to have to do and then turn around and say I can’t do this, I am out of here.” The reality is sometimes at the last minute a county election official will grab anyone who is eligible to work. So there is a possibility they may not have the proper people as prescribed by statute working the polls.

The majority of the county election officials the committee talked with had people working year-round looking for poll workers or keeping back-up poll workers handy. This is done to compensate for unfilled positions and for those workers who do not show up. Ms. Debeauvoir stated county election officials could have a 10% fall off rate (no shows, or workers breaking contract) during an election and must be prepared. Even Allison Harbison (Shelby County Clerk), because their county is smaller, will close the county clerks office on election day so she can go to the polling sites herself until election workers arrive to fill the void.

One can clearly see the statutes as written hinder an efficient electoral process, when it should be a tool of efficiency. This inconsistency does not stop there but continues with the training mechanism as well. County Clerks are required by law to provide one or more sessions of training to election judges and clerks in elections ordered by the governor or a county authority.⁹⁵ Law also allows that political subdivisions may and that a county executive committee of a political party must provide training to poll workers. What happens numerous times are these political subdivisions and/or executive committees of political parties will contract with the county clerk or election administrator of the county to train their appointed poll workers. However, the possibility is there for poll workers to be trained three different ways for three different elections.

The general consensus between county election officials, both of small and large counties, was there needs to be consistency in the Election Code between the statutes governing general elections and primary elections. These inconsistencies wreck havoc on training, recruiting, and retaining poll workers as well as the over all efficiency of Texas’ electoral process. Once these statutes are fixed and are assisting our county election officials then they could concentrate more on the other problems dealing with recruiting and retaining poll workers.

These next issues are common during every election and are the “little things” keeping some poll workers from coming to the polls. For example, it is hard for counties, especially during primary

elections, to compete with the political parties. Those interested in government are recruited by the political campaigns.

Another difficulty poll workers often face during an election is the volume of questions flooding the polling place. Poll workers processing voters will get inundated with hundreds of questions. These are usually simple questions like: Who is on the ballot? What is on the ballot? Am I in the correct precinct? Although these questions are at most times simple, the sheer numbers of them can hold up processing lines.

Closing out polls proved to have difficulties associated with it. After 12 long hours, election workers must close out the polls, which entail a lot of paper work. This paper work as Ms. Debeauvoir put it, “is sort of color coded”, but it is still very confusing and could be made clearer for the election workers. According to Ms. Debeauvoir, in her survey of Travis County poll workers, 1/3 of them said the bureaucracy was so great they were not sure they could complete it successfully. In fact, the complexity of elections in general and the increased level of responsibility were cited most frequently as a reason for quitting.

Allison Harbison (Shelby County Clerk) wanted the committee to consider one important thing at the end of her testimony. It was to remember both large and small counties need to be treated separately, and she could not stress the importance enough. Becky Groneman (Oldham County District and County Clerk) shared with the committee just what Allison was referencing when she gave the committee her county’s profile. Oldham County has no colleges, its population is 2,150, there are only two high schools, the only state employees are DPS and TxDot (so the number of poll workers to recruit are very limited), it has seven voting precincts, and there are 1,400 registered voters. Ms. Groneman reminded the committee when considering legislation, what might work for a large county may not work for a small county and visa versa.

The overall consensus among the county election officials is state law and the bureaucracy it is coupled with needs to be simplified. If the State of Texas truly wants to increase recruiting and retention numbers in its poll workers, then the state must make it easier for people to work at the polls, i.e. high school students, college students, employed workers and others. It is also necessary to make statutes in the Election Code more consistent with one another to help county election officials run efficient elections, not hinder them.

New Pools:

The shortage of poll workers across the nation has many states scouring for new sources or pools of people to work the polls. What states are finding out is there are countless pools of people to use as resources if one looks around and uses their imagination. Some states have found these resources and have been applying new methods in order to engage these citizens in the electoral process. Getting new people involved of course takes time and hard work, but when these relationships are established with the local communities' states find they will have an endless supply of poll workers. The committee talked to Commissioner Hillman, the local election officials and advocacy groups to come up with some new ideas the State of Texas could explore. Together the committee looked at ways and benefits of accessing county, state, and federal workers, businesses, local entities, college students and high school students.

It was agreed upon among the committee county, state, and federal workers would be great pools of people to access for Election Day. The committee asked Commissioner Hillman what other states have done in regards to allowing county, state, and federal workers to work as poll workers. While some states have actually designated Election Day a holiday, what those states have found is when Election Day is designated as a holiday, people tend to not show up. As the commissioner pointed out lives are busy and these employees are always looking for an extra day for other things.

Commissioner Hillman explained the USDA does in fact have a program encouraging its employees to work as poll workers. These employees volunteering their time do not have to take a personal day or a vacation day. They are compensated with their regular salary for that day, plus are paid for working at the polls, which is an added bonus. What states have found is the best approach is to “reassign” those employees for days they are working the polls instead of giving everyone a holiday off.

Jacque Callanen, Elections Administrator for Bexar County, shared with the committee just how effective this pool of resources actually can be. When she ran short of poll workers for the 2008 Primary, she called on her Commissioners Court for more workers. Bexar County sent county employees to rescue Jacque. The county employees were scheduled the day of the primary as being assigned another duty. Because of the county employees, Jacque did not have to worry about not having enough poll workers in her precincts.

Representative Burnam believed the state should be willing to absorb some of the costs on Election Day by “reassigning” those employees willing to participate as poll workers. Representative Bohac pointed out the benefits of doing so, “County employees are already trained, and they work for the government so they have a level of trust, they are tech savvy, and the accountability is already there.”

County, state, and federal employees would be excellent pools of resources. Allowing those to participate as poll workers without consequence of losing pay or taking a personal day would benefit the state on Election Day by providing an ample number of qualified poll workers. Additionally this practice would further instill the idea that Texas cares about elections and by allowing employees to keep their salary on top of election pay would create a new recruiting mechanism. This should save money in the long run, because when these employees continue to work the polls, the amount of money used to train new poll workers each year would go down.

Commissioner Hillman believed encouraging large businesses to allow employees to work the polls and getting the private sector involved is another option. She says it is a new concept for most, but when referring to working at the polls as a community service instead of party politics it is better received. As she pointed out, there are many large businesses with community service projects. While it is true many businesses could not afford the loss of employees on every election, they could be willing to allow employees to work federal elections.

Some states have made it law restricting businesses from penalizing employees for taking time off to serve as poll workers. Programs like “Official Election Sponsors” in Salt Lake County, Utah and “Champions of Democracy” in Franklin County, Ohio have successfully recruited poll workers from corporations including State Farm Insurance and America Electric Power Company

Inc.⁹⁶ Commissioner Hillman continued to point out in testimony, allowing employees to volunteer does not necessarily cost corporations money if community service projects are properly budgeted for.

Karen Renick of Vote Rescue also shared many suggestions to find new pools of resources. She recommended looking at chambers of commerce, numerous cultural organizations, unions, and most importantly, former military personnel. As she pointed out, there are many of our veterans coming home and are actively looking for ways to get involved with their community. Working as a poll worker would be a great way for military personnel to get reacquainted with their community.

The average age of today's poll worker is 72 years old.⁹⁷ While their service is much appreciated, their numbers dwindle with each passing election younger generations replacing are not becoming involved. With more than 180,000 polling sites across the U.S., many states are turning to their young people in colleges and high schools to replenish their polls.

An interesting report the committee acquired related to recruiting college students as poll workers. Dr. Rachael Cobb, Associate Professor of government at Suffolk University, field-tested the EAC's guide for recruiting college poll workers and recruited over 150 students to serve as poll workers on Election Day for the November 2006 election in Boston, Massachusetts. As Dr. Cobb points out, serving as a poll worker is one of the best ways for a student to learn about the "messiness" of democracy and the challenges faced to ensure each election is fair.⁹⁸

Dr. Cobb, as well as our own officials, stated some of the problems persisting are municipalities dealing with no shows on Election Day and the diminishing population of the average 72-year old poll worker. Additionally, as elections are becoming increasingly technology driven, election officials must find poll workers possessing high comfort levels with new technologies. College students are well educated, comfortable with computers, and can manage the physical aspect of poll working.⁹⁹

Dr. Cobb found start up costs for a college program was high, but once established were well worth the effort. It serviced the municipalities by providing new fresh poll workers while establishing a great learning service for the students. They feel once the program is up and running, the program will largely run itself and will endure overtime. In surveying the student poll workers, Dr. Cobb found 91% of their students were definitely or likely to participate as a poll worker in a future election, and 74% of them were satisfied or very satisfied with their overall experience.¹⁰⁰

With the number of colleges and universities in the State of Texas this seems like a great untapped source of poll workers. In 2004, as part of the Help America Vote Colleges Program, the U.S. Elections Assistance Commission began distributing grants for the development of poll worker recruitment initiatives. So far, the EAC has awarded one million dollars to 34 colleges, universities and non-profit organizations.

The committee was excited to learn recently the Texans Together Education Fund, a nonpartisan 501(c)(3) non-profit organizations, has been issued one of these grants to start a program that would train a new generation of Texas' poll workers. The project is called Help Houston Vote

and is the first program of its kind in Houston, Texas. This program will target young adults with the purpose of placing them as trained assistant poll workers in Harris County Precinct One. Students will be required to take two poll worker training courses and will have to successfully complete the Texas Secretary of State's Online Poll Worker Training.¹⁰¹ The committee is anxious to hear how successful this program becomes and will be looking forward to upcoming reports.

Colleges of course are not the only source of poll workers that could be accessed. County Boards of Elections have teamed up across the country in an effort to pursue high school students as well. Thirty-nine states and the District of Columbia have enacted laws allowing students under the age of 18 to serve at the polls in some capacity. Generally these laws require the student be at least 16 or 17 years old and must meet citizenship and residency requirements other poll workers must meet. Additionally these students must get permission from their principal and be students of good standing.¹⁰² This quote found in the Electionline.org briefing, Helping Americans Vote: Poll Workers, illustrates one benefit of involving high school students. "By developing the relationship with schools we have developed a continuing source of young people every year... Each year new high school seniors become involved," is what Deborah Koch, a coordinator of central Ohio's Youth at the Booth program, said.

During the committee hearing, Chairman Berman asked Commissioner Hillman how she thought the use of high school students was working throughout the U.S. She informed the committee the states who have been training high school students for a while now have gone through the transition period and now see how using high school students really benefit the polls. She believes with appropriate training, high school students are very useful as poll workers, and is a wonderful way to introduce young people to the electoral process.

One thing she mentioned, it is beneficial to have the youth there with the new technology and states using high school students do so because they do find them to be an asset. For instance in Franklin County Ohio, around 700 student poll workers participated in Ohio's March 2008 Primary Election and so far there are over 1,000 youth poll workers signed up for the November 2008 presidential election. That is 1,000 out of the 6,832 total poll workers needed for Franklin County.¹⁰³

Currently, Texas does not allow anyone under the age of 18 to work as poll workers; however Kim Kizer (Director of Education and Outreach for the SOS) thinks it is a viable option. She knows there are many community service groups in high school, such as Key Club, The National Honor Society, and many others. Ms. Kizer told the Committee she has seen the excitement build within students' participating in student mock elections and believes the excitement would carry over in poll working. She has seen it work in other states like Ohio, California, and Indiana and does not see why it could not work in Texas.

Representative Howard suggested the state target students in the Mock Legislature Sessions and to home schooled students. Many county officials the committee talked to were agreeable, even excited about the idea. One witness in particular who was not thrilled of the idea of training high school students at the time was Allison Harbison of Shelby County. However, when committee staff talked with Ms. Harbison again at the Election Law Seminar she said she was having a change of heart and was warming up to the idea. Committee staff addressed a number of county

clerks and election administrators at the same election law seminar on how they felt about youth working the polls. Hundreds welcomed the idea, and even felt they would be able to find the required number of bilingual workers easier if able to access high schools. County election officials mentioned high school students are also comfortable with the oncoming technology and could be an asset in that field. Not to mention the younger crowd might be more apt at handling the long hours and the physical requirements involved with working the polls.

Allowing high school students to participate as poll workers could alleviate the Tuesday recruitment issue as well. Students could work those hours on Tuesdays normally spent in school, educating them first hand on what happens on Election Day. Also, as pointed out in testimony, some of the state's smaller counties do not have access to state, county, or federal employees or college students so it would be beneficial if they could access high schools.

The State of Texas already has youth out-reach voting programs as a part of the Project V.O.T.E. (Voters of Tomorrow through Education) educational campaign. Programs include Mock Elections, Web Pages dedicated to young or first-time voters, and the SOS is planning more young-voter outreach possibly including MySpace and Facebook pages. The state does not allow 16-17 years old to participate as election workers. These programs could easily be used to reach out to potential high school students interested in becoming a poll worker. The State of Texas has the tools to access this untapped source of poll workers; it just needs to open the tool box. Involving the youth of Texas in the electoral process would teach and instill the importance of voting and could solve the shortage of poll workers.

Recommendations:

1. The committee believes the state will avoid out-of-pocket expenses if legislature passed legislation clarifying any county or state employee is eligible, based on permission from a supervisor, to work at the polls with salary. If the state clarified that county and state employees were eligible to work at the polls with salary, those employees willing participate could. Allowing these employees to keep their salary on top of what they make at the polls would add extra incentive for them to come back for future elections. The more "veteran" poll workers coming back means less money spent on training new poll workers.
2. In regard to military personnel, the committee believes it is worth looking into attaching to the Federal Post Card Application, information on how military personnel returning home can become involved with the electoral process and will work with the Secretary of State's Office to see what it would take to do this.
3. In order to stimulate interest in the electoral process amongst Texas' youth and to meet the need of a new generation of highly trained poll workers, the committee recommends that the 81st Legislature allow high school students with good standing the opportunity to work at the polls. The committee further recommends any absence due to being a poll worker is an excused absence and all high school students be compensated as any normal poll worker would.
4. The committee recommends the 81st Legislature work with county election officials to look at the possibility of setting aside one person working the polls voters with general questions regarding the election, precincts, etc. that most poll workers get caught up with. The idea being

if voters could go to this person for questions, the questions would not hold up the other poll workers processing voters, keeping the lines moving.

5. With the assistance of the county election officials, the committee recommends it work with the Secretary of State's Office in creating a more efficient color coding system for closing out elections.

6. Most importantly, the Committee recommends the 81st legislature establish a priority in making the election code more consistent between the general and primary elections in regard to training programs and pay scales. It further recommends giving the county election officials more access to poll worker resources, more authority in training the poll workers and more authority in choosing who poll workers with approval from the political parties become. The committee believes consistency in elections will greatly assist the state's county elections officials in running smoother and more efficient elections.

Charge No. 5

Monitor which counties are chosen by the Secretary of State for the new super precinct pilot program, and observe their progress.

Background:

During the 79th Regular Session House Bill 758 was passed, requiring the Secretary of State to create a pilot program in one or more counties to establishing the efficacy of the county wide election precinct concept (also termed "super precincts" or "vote centers").¹⁰⁴

The Secretary of States' Office solicited counties to participate in the pilot program at the August 2005 Election Law Seminar for County Clerks and Elections Administrators. At this forum the Secretary of State laid out guidelines for counties who wished to participate in the program. Lubbock County was the only county that submitted an application fulfilling all the requirements necessary to participate. (For clarification purposes, Lubbock referred to the concept as "Super Precincts", but the actual county wide polling places were called "Vote Centers".)¹⁰⁵

Lubbock County made many efforts to inform their voters of the changes in the voting process. Lubbock worked with its mass transit authority to provide free bus service on Election Day to those who showed their registration certificate. This outreach was in response to concerns regarding expenses incurred on voters traveling to new precincts. The county also held a mock election prior to the November election to observe what problems could occur and established procedures to remedy those possible concerns. Because of the county's meticulous planning prior to the election, there were no significant set backs on Election Day.¹⁰⁶

Lubbock County provided 35 Vote Centers, replacing its usual 69 county election precincts. It did retain 8 of the regular precincts for the more rural areas.¹⁰⁷ Upon the Secretary of States' request Lubbock conducted an exit survey. The results were as follows:

5,029 voters participated in the survey.

95.45% liked the Super Precinct concept.

90.63% found the Vote Center more convenient than voting at their home precinct.

98.39% found the Vote Center location easy to find.

50.13% chose the Vote Center close to home.

30.49% chose the Vote Center close to work.

95.18% would like to see the Super Precinct concept used in all future elections. (cities, school, water districts, etc. elections)

42.39% learned about the Vote Centers from television.

21.26% learned about the Vote Centers from the Elections Office Letter.

19.67% learned about the Vote Centers from newspapers.¹⁰⁸

Lubbock County Elections Administrator received 11 complaints forwarded from the county Democratic chair, most of which involved personnel or training issues. Regarding costs the Lubbock County Election Administrator stated there was no cost savings for November 2006, but she expected cost savings to begin once "start up" costs were absorbed.¹⁰⁹

Final observations from Lubbock County were as follows:

"Lubbock County found through the exit survey and personal encounters that voters love the concept of Super Precincts. There was no wrong place to vote using Vote Centers. We observed an improved sense of the electoral process.

From a managerial observation, we found improved coordination and efficiency. Overall, there was less stress except for the fact of being the "only pilot count in Texas". There was tremendous cooperation and communication from Party Chairs, County Commissioners, and all County departments to the media onto the voters.

The Vote Centers worked great for the voters and Lubbock County. We are not where we want to be without overall election turnout. We believe that the Super Precinct concept, if applied to all elections, over time, will improve the consistency, convenience and stability which voters desire and we believe that will lead to increased over all turnout for Lubbock County."¹¹⁰

The New Program:

It was recommended to the Legislature by the Secretary of States' Office to continue the Super Precinct pilot program. Because of the positive results received from Lubbock County, the Legislature responded by passing House Bill 3105 by Representative Anchia.

House Bill 3105 requires the Secretary of State to establish a countywide polling place pilot program for the November 4, 2008 election. Under the continued program, selected counties will conduct Election Day voting at countywide voting locations, instead of providing polling places in each county election precinct as generally required under the Texas Election Code.

Participation in the pilot program was limited to interested counties which: (1) use direct recording electronic ("DRE") voting systems and (2) provide a computerized and linked voter registration list at each polling place. In addition, interested counties were required to conduct a public hearing and submit a transcript of the hearing to the Secretary of State prior to joining the program.

Lubbock and Erath counties will participate in the continuing pilot program this November. The

goal for the countywide precincts is twofold. Voters will be able to choose the most convenient location on Election Day which, for example, may be closer to their place of employment than their residence. For the participating counties, having fewer polling places will allow them to increase efficiency by having more voting system equipment at each location and more trained personnel at each of the countywide polling places.¹¹¹

Recommendations:

The election affected by this pilot program will not occur until November 4, 2008, so the committee cannot at this time make a determination on whether or not the program is a continued success. The Committee will continue to monitor this program and will have the Secretary of States Office report to the whole committee on this issue at the beginning of the 2009 session. The committee will then make recommendations to the House regarding the Super Precinct program.

Charge No. 6

Study the exemption in the Texas lobby contingent fee ban, which currently permits contingent fees and does not require lobby registration, for influencing the purchasing of goods or services by a state agency. Consider whether this exemption should be amended or repealed.

Background:

When Senate Bill 1 established the Texas Ethics Commission (TEC) in 1991, it additionally made two notable exceptions to the contingency fee provision in Section 305.022 of the Government Code. The exceptions the contingency fee ban does not apply to are: a sales commission payable to an employee of a vendor of a product or legal representation before a state administrative agency in a contested hearing or similar adversarial proceeding.¹¹²

This charge deals specifically with Section 305.022 (c) of the Government Code concerning a sales commission payable to an employee of a vendor of a product. This charge also focuses on the lobby registration exemption created by Texas Ethics Commission Rule 34.5.

Important to note, it is not the contingency fee ban statute that does not require lobby registration, but the interpretation of the ban created by Ethics Rule 34.5. More importantly, the Ethics Rule came after the amendment to the contingency fee ban.

Interim Charge Six is a very complex issue. To study the issue in its entirety one must first look at the current statutes in the Texas Government Code and the Ethics Rules intertwined with this issue to see where we stand today. Second, it is necessary to look at the current issues at hand this charge addresses. Finally, a step by step look must be examined from the beginning of when the changes to the contingency fee ban took place to today to illustrate how it has evolved overtime.

After studying this process the committee will give its opinion on these issues and then recommend to the 81st legislature what it believes to be the best course of action during the 2009 session.

Statutes, Rules, and Issues at Hand

The statutes involved with this issue are:

1. Section 305.022 of the Government Code concerning the contingency fee ban and;
2. Section 305.003(a) of the Government Code concerning persons required to

register.

Section 305.022 is the statute housing the exception to the contingency fee ban.

§ 305.022. CONTINGENT FEES. (a) A person may not retain or employ another person to influence legislation or administrative action for compensation that is totally or partially contingent on the passage or defeat of any legislation, the governor's approval or veto of any legislation, or the outcome of any administrative action.

(b) A person may not accept any employment or render any service to influence legislation or administrative action for compensation contingent on the passage or defeat of any legislation, the governor's approval or veto of any legislation, or the outcome of any administrative action.

(c) For purposes of this section, a sales commission payable to an employee of a vendor of a product is not considered compensation contingent on the outcome of administrative action.

(d) This section does not prohibit the payment or acceptance of contingent fees:

- (1) expressly authorized by other law; or
- (2) for legal representation before state administrative agencies in contested hearings or similar adversarial proceedings prescribed by law or administrative rules.

The next statute tying into this issue is Section 305.003(a) of the Government Code.

§ 305.003. **PERSONS REQUIRED TO REGISTER.** (a) **A person must register with the commission under this chapter if the person:**

(1) makes a total expenditure of an amount determined by commission rule but not less than \$200 in a calendar quarter, not including the person's own travel, food, or lodging expenses or the person's own membership dues, on activities described in Section 305.006(b) to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action; or

(2) receives, or is entitled to receive under an agreement under which the person is retained or employed, compensation or reimbursement, not including reimbursement for the person's own travel, food, or lodging expenses or the person's own membership dues, of more than an amount determined by commission rule but not less than \$200 in a calendar quarter from another person to communicate directly with a member of the legislative or executive branch to influence legislation or administrative

action.

(*Note: According to The Ethics Commission Rule, thresholds have been changed by rule to \$500 for expenditures and \$1,000 for compensation.)

In her testimony to the committee Natalia Ashley, General Counsel for the Texas Ethics Commission, made clear Section 305.003(a) applies to everyone, lobbyists and non-lobbyists. One can easily see in these two statutes where confusion and questions could arise.

If a person is an employee of a vendor of a product and that person's job is to sell items for the general day to day operation of an agency; does the employee have to register as a lobbyist? The exception in the contingency fee ban clearly states an employee is exempt from the contingent fee prohibition, but does the employee have to register since registration applies to everyone? An agency is clearly an executive branch of the government and the salesperson is clearly communicating to an executive branch and is clearly trying to influence the agency to buy products. An employee is just doing their job; must they have to register in order to properly carry out their job?

The TEC responded to these questions with Ethics rule 34.5 under Chapter 34-Regulation of Lobbyist.

§ 34.5. Certain Compensation Excluded

Compensation received for the following activities is not included for purposes of calculating the registration threshold under Government Code § 305.003(a)(2), and this chapter and is not required to be reported on a lobby activity report filed under Government Code, Chapter 305, and this chapter:

- (1) requesting a written opinion that interprets a law, regulation, rule, policy, practice, or procedure administered by a state office or agency;
- (2) preparation or submission of an application or other written document that merely provides information required by law, statute, rule, regulation, order, or subpoena, or that responds to a document prepared by a state agency;
- (3) communicating merely for the purpose of demonstrating compliance with an audit, inspection, examination of a financial institution, or government investigation to interpret and determine compliance with existing laws, rules, policies, and procedures;
- (4) communicating for the purpose of achieving compliance with existing laws, rules, policies, and procedures, including communications to show qualification for an exception of general applicability that is available under existing laws, rules, policies, and procedures;
- (5) communicating in the capacity of one's service on an advisory committee or task force

appointed by a member;

(6) responding to a specific request for information from a member of the legislative or executive branch, when the request was not solicited by or on behalf of the person providing the information;

(7) communicating to an agency's legal counsel, an administrative law judge, or a hearings examiner concerning litigation or adjudicative proceedings to which the agency is a party, or concerning adjudicative proceedings of that agency;

(8) providing testimony, making an appearance, or any other type of communication documented as part of a public record in a proceeding of an adjudicative nature of the type authorized by or subject to the Administrative Procedure Act, Government Code, Chapter 2001, whether or not that proceeding is subject to the Open Meetings Law;

(9) providing oral or written comments, making an appearance, or any other type of communication, if documented as part of a public record in an agency's rule-making proceeding under the Administrative Procedure Act, Government Code, Chapter 2001, or in public records kept in connection with a legislative hearing;

(10) providing only clerical assistance to another in connection with the other person's lobbying (for example, a person who merely types or delivers another person's letter to a member); or

(11) communicating to a member of the executive branch concerning purchasing decisions of a state agency, or negotiations regarding such decisions.

This rule gave answers to the first line of questions. Yes, an employee is in communication with an executive branch of the government and is influencing their purchasing decision, which is an administrative action, but an employee of a vendor of a product does not have to register as a lobbyist.

With rule 34.5 brought more questions. Does a person have to be an actual employee or does the contingent fee exception apply to contracted individuals as well? Does the contingency fee ban apply to an employee or the efforts of an employee?

In 1996, TEC issued Rule 34.21 in response to these questions.

§ 34.21 Contingent Fees for Influencing Purchasing Decisions.

Government Code, Section 305.022, does not prohibit contingent fees for efforts to influence state agency purchasing decisions.

Jack Gullahorn, who is the president and general counsel for The Professional Advocacy Association of Texas, made this statement in his testimony to the Committee during the

hearing:

"Through advisory opinions the commission now has a rule that says contingency fee ban does not apply to purchasing decisions in the registration requirement. By opinion the commission has clarified or broadened the definition of an employee of a vendor of a product to include an independent contractor, meaning lobbyist, consultant, hired person, so that exception includes anyone working for a vendor of a product and includes whatever a product is."

As one problem is fixed another problem is created unintentionally. What began as an exception for employees of a vendor of a product now encompasses private contractors, lobbyists, etc, as employees and also considers products to include services and service providers.

The issues the committee is taking in consideration are: Who is supposed to be considered an employee? What is supposed to be considered a "product"? Did the legislature intend to encompass all these entities or just the actual "employee" of a vendor of a product? Did the legislature intend for the term "product" to include everything from services to service providers, or did it mean the everyday products used for the general everyday operation of a state agency? Should the contingency fee exception be amended or repealed.

Another issue involves the definition of a purchasing decision. Jack Gullahorn raised the issue in his oral and written testimony. He stated in written testimony:

"Though the statutes prohibit contingent fees for legislative and administrative matters, and require registration for communication on administrative matters, the Ethics Commission has adopted rules and Advisory Opinions (upon which a person may rely as a defense against prosecution) that provide that the prohibition on contingent fees, and the requirement to register as a lobbyist under the compensation threshold do not apply to "purchasing decisions" of an administrative agency.

Because there is no definition of "purchasing decisions", a person is not able to know with assurance whether their conduct might violate the law. Because of these opinions and rules, many persons now believe that they do not have to register or report under the lobby act if they are involved in a "purchasing decision" of an agency, although registration and reporting is required for those crossing the "expenditure threshold". Additionally, there is a general belief that ANY purchasing decision is exempt from the ban on contingent fees; although that also may not be the case. However, since the rules give no guidance as to what a "purchasing decision" is, many believe that they are free to do any of this work on a contingent fee basis without risking violating the law."

The most important question arising is: Has the TEC interpreted the law in a manner consistent with legislative intent.

The Steps:

Once the statutes, rules and the issues are known, it is necessary to go to the beginning of this timeline, through a step by step process in order to fully understand how to address these problems and see exactly where the expansion of this statute began.

Step 1:

In 1991 Senate Bill 1 created the TEC and in the process amended Section 305.022 of the Government Code. This amendment created an exception to the contingency fee ban allowing it to be permissible for an employee of a vendor of a product to be paid on a contingency fee basis.

Step2:

In 1993 the TEC was asked whether or not the efforts of a salesperson to selling materials to a state agency would require a sales person to register as a lobbyist and whether or not the communication between the state agency and the salesperson would be considered communications influencing an administrative action. This in turn brought up the question of whether the purchase by the agency would constitute an administrative action. Prior to this decision an administrative action did not include purchasing decisions.¹¹³

The commission determined in Ethics Advisory Opinion No. 158 this kind of communication would be a communication to members of an executive branch (as the registration statute in Section 305.003(a) of the Government Code defines) and the decision being made to purchase said items would be an "administrative action". Therefore, the communications to encourage a state agency to buy certain products are communications to influence administrative actions.¹¹⁴

Step 3:

At the same time Advisory Opinion No. 158 was issued TEC was asked whether or not lobby communications included investment bankers receiving compensation for communicating with an executive branch to influence an agency's action in selecting service providers, and if so would the communication require the investment banker to register as a lobbyist.

The commission issued Advisory Opinion No. 160 and concluded the selection of a service provider is considered a purchasing decision, and since there is a purchasing decision exemption by rule, the investment banker would not have to register as a lobbyist.¹¹⁵ It was at this point in time a purchasing decision was interpreted to include "the selection of a service or service provider".

The reasoning possibly being since the investment banker was influencing an "administrative action" (a purchasing decision) of an executive branch for a service provider, and since the purchasing decision must be of a product, then a service or a service provider must be a product; therefore making the investment banker "a vendor of a product."

Step 4:

Soon after these advisory opinions were issued TEC adopted what would later become Rule 34.5 (11), which stated communication to a member of the executive branch concerning purchasing decision of a state agency or negotiations regarding such decision would not be included as compensation for calculating the registration threshold under Section 305.003(a) (2) of the Government Code.¹¹⁶ By this rule the commission created a purchasing decision exemption, exempting sales persons from having to register under Section 305.003(a) (2) of the Government Code

Step 5:

In January of 1994 TEC was asked whether or not paying or agreeing to pay an employee or outside consultant a commission fee for soliciting, acquiring and closing underwriting projects for state bond issuers would violate Section 305.22 of the Government Code.

The commission again cited Section 305.022 (c), the question raised being, does Section 305.022 prohibit a contingent fee for efforts to influence a state agency's selection of a provider of investment banking services?

The commission determined in Advisory Opinion No. 185 the Government Code does not prohibit contingent fees for efforts influencing state agency purchasing decisions.¹¹⁷

Step 6:

In 1996 TEC was asked to clarify whether or not Ethics Advisory Opinion No. 185 was meant to include contingent fees in the exemption, regardless the person was a regular employee of a vendor of a product or an independent contractor.

In Advisory Opinion No. 341 the commission concluded the focus of the opinion was the nature of the agency's decision a person is attempting to influence, not the employment relationship between the person attempting to influence a decision and the person he or she represents.

Opinion No. 185 applies to all contingent fees for efforts to influence agency purchasing decisions, regardless of whether the person attempting to influence an agency purchasing decision is working as an employee of a vendor of a product or as an independent contractor.¹¹⁸

Studying this time line of events objectively, this opinion skewed sharply from what the committee believes was the original intent of Section 305.022(c) of the Government Code.

Step 7:

The following November after Advisory Opinion 341 was presented the TEC issued Ethics Rule 34.21, which encompassed the previous two advisory opinions. It read: "Government Code Section 305.022 does not prohibit contingent fees for efforts to

influence state agency purchasing decisions."¹¹⁹

This step by step procedure clearly shows when, where, and how the scope of the contingency fee ban exemption was broadened.

Legislative Intent: Addressing the Issues

The committee understands the intricacies and the laborious decisions involved with the Texas Ethics Commission and does not believe the expansion of the scope of the contingency fee ban was done intentionally. It is also important to remind members of the legislature, this expansion was done over a number of years and these opinions were not passed by the members of the current TEC. In fact it was concerned members of the current TEC who brought this issue up for discussion in the 80th legislature and has asked again for the Legislatures' guidance.

The committee agrees with the commission that a "purchasing decision" is an administrative action. It agrees an employee communicating with a state agency to purchase products is a communication to influence an executive branch. The committee agrees an employee of a vendor of a product should not have to register to do their job.

Where the committee believes a sales person who is an employee of a vendor of a product should be exempted from registering as a lobbyist, the committee does not think an independent contractor is a traditional employee. However, it is not to say they could not be included through legislative discretion as long as there were restrictions in place.

Did the legislature intend for the term product to include everything from services to service providers? The committee believes the intent of the original legislation did not intend to include services or service providers, but to solely include the everyday products used for the general operation of a state agency. The committee realizes in an age where services are bought for the day to day operation of computers and office equipment the definition of product does need to be reexamined at this point in time.

On the matter concerning the TEC interpretation of the statute, while the committee believes the TEC was acting in good faith the committee does not agree the commission interpreted the statute in its original intent. While this committee is considering whether the current statutes as written is overly restrictive or if it should be further tightened, it does believe the language of the current statute should be enforced and not modified beyond its scope by administrative regulation.

On Opinion 341:

The committee would like to address Advisory Opinion No. 341 separately. To recount what was stated in Advisory Opinion No. 341 the TEC concluded the focus of the opinion was the nature of the agency's decision a person is attempting to influence not the employment relationship between the person attempting to influence a decision and the

person he or she represents.¹²⁰ The committee disagrees with this logic. It believes when Advisory Opinion 341 was interpreted to include independent contractor, it should have taken in account the actual employment relationship as the law states (an employee of a vendor of a product). Not to do so would be ignoring the actual intent of the original contingent fee exception which was this committee believes, to keep an employee from being penalized for doing their job as a sales person; i.e. making them register as a lobbyist.

The committee believes the interpretation was not intentional and applauds the work of the TEC, acknowledging service on the Texas Ethics Commission is voluntary. It also recognizes the legislative body is not always easy to work with and miscommunications can happen between itself and a state agency with regards to the intent of legislation.

Recommendations:

The committee believes the TEC should strengthen the public's right to know who is being compensated to lobby the state or purchasing decisions, and further believes the public policy of limiting or prohibiting contingent fees is an increasingly important goal as the size of many purchasing contracts increases to the millions of dollars. To help the commission carry out this charge the committee recommends the legislature:

1. Clarify in statute that an employee of a vendor of a product does not have to register as a lobbyist.

Make the determination of whether or not independent contractors should be included in this exception. This committee believes independent contractors should not unless restrictions are accompanied with them statutorily.

2. Define statutorily the word product, consider whether or not the term "product" should include services or service providers, or if it should be solely the tangible everyday products used to run the general day to day operations of a state agency.

In Natalia Ashley's testimony she informed the committee in Blacks Law Dictionary "product" is defined as follows: Something that is distributed commercially for use or consumption and that is usually (1) tangible personal property, (2) the result of fabrication or processing, and (3) and item that has passed through a chain of commercial distribution before ultimate use or consumption.

Tangible personal property is defined in Blacks Law Dictionary as follows: Corporeal personal property of a kind: personal property that can be seen weighted, measured, felt, or touched, or is in any other way perceptible to the sense, such as furniture, cooking utensils, and books.

3. Clarify how broad state agency purchasing decisions should be construed. Should the contingency fee ban apply to all purchasing decisions or just the purchasing decisions

smaller in nature?

4. Request the TEC to repeal Advisory Opinion No. 341 until the legislature can make a determination on whether or not independent contractors need to be included into the contingency fee ban exception. The committee strongly suggests to the 81st legislature this was not the original intent of the contingency fee ban. However, if the legislative body does decide to include independent contractors into the exception, the committee does believe the Ethics Commission has the authority to set thresholds requiring "independent contractors" being paid on a contingency fee basis to register if "independent contractors" fall within certain monetary brackets.

The committee recognizes the importance of this issue and believes it must be dealt with during the 81st session. It is important to point out this issue was asked to be clarified during the 80th legislative session. A number of bills were introduced and passed out of committee, but due to time constraints legislation was never considered by the full House.

Another important note is during the interim of the 80th Legislature the TEC deliberated over many proposed rules either broadening or tightening the scope of Section 305.022 of the Government Code. The committee expressed its concerns in two letters to the commission as it has in this report. The TEC finally decided not to take action and is waiting for the guidance of the legislature.

The Committee asks the 81st Legislature make this issue involving contingent fees a priority. Clarifying these issues will allow the TEC to carry out their duties more effectively.

Charge No. 7:

Research the current Texas law prohibiting the use of public resources for political advertising, and determine whether the laws need to be amended to clarify that publicly funded e-mail systems may not be used for political communications.

Background:

Currently it is legal for someone who works for a political subdivision (including a school system) to send e-mails supporting or opposing a candidate or measure from a publicly funded computer. Section 251.001 (16) of the Election Code clearly does not have e-mail included in the definition of political advertising.

A number of questions arise because of this issue. Should e-mails supporting or opposing a candidate or measure be included in the definition of political advertising? Is sending e-mail supporting or opposing a candidate from a publicly funded computer considered a misuse of public resources? Are misuses of public resources equivalent to misuses of public funds? How do you regulate it?

Looking at it at first glance the answer sounds simple. One might conclude, "Employees of a political subdivision should not be able to send out e-mails opposing or supporting an officer or a measure, and doing so is a misuse of public resources. Why not include e-mails in the definition of political advertising? Would this not prevent employees from using publicly funded computers to send e-mails supporting or opposing a candidate or measure?" This solution sounds easy, however, if e-mails were included in the definition of political advertising all e-mails would have to be regulated, personal or otherwise.

To properly investigate this charge it is important to look at the laws and rules surrounding this issue, study the advisory opinions the Texas Ethics Commission (TEC) has issued, look at the reason why it would be difficult to include e-mails into the definition of political advertising and then look at the solution the committee believes would resolve this issue. Once the background of this charge is completed, the committee will give its opinion on the matter and recommend to the 81st Legislature what the best course of action would be.

Statutes, Rules and Advisory Opinions

Statutes:

The issue at hand is tied to many sections of the Election Code. First is the definition of political advertising as found in Section 251.001, which does not include e-mail. The next section involved is Section 255.003 of the Election Code, which prohibits an officer or an employee of a political subdivision from spending or authorizing the spending of public funds for political advertising. The section, which the committee believes to hold the solution, is found in Section 255.0031 of the Election Code. This section prohibits an officer or an employee of a political subdivision or state agency from using or authorizing the use of an internal mail system for the distribution of political advertising. Finally, the section providing difficulty to include e-mail

into the definition of political advertising is Section 255.001 or the **Required Disclosure on Political Advertising** section.

Below are the necessary statutes as written in code:

§ 251.001. DEFINITIONS. In this title:

(16) "Political advertising" means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that:

(A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or

(B) appears:

(i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or

(ii) on an Internet website.

§ 255.001. REQUIRED DISCLOSURE ON POLITICAL

ADVERTISING. (a) A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising:

(1) that it is political advertising; and

(2) the full name of:

(A) the person who paid for the political advertising;

(B) the political committee authorizing the political advertising; or

(C) the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate.

(b) Political advertising that is authorized by a candidate, an agent of a candidate, or a political committee filing reports under this title shall be deemed to contain express advocacy.

(c) A person may not knowingly use, cause or permit to be used, or continue to use any published, distributed, or broadcast political advertising containing express advocacy that the person knows does not include the disclosure required by Subsection (a). A person is presumed to know that the use of political advertising is prohibited by this subsection if the commission notifies the person in writing that the use is prohibited. A person who learns that political advertising signs, as defined by Section 255.007, that have been distributed do not include the disclosure required by

Subsection (a) or include a disclosure that does not comply with Subsection (a) does not commit a continuing violation of this subsection if the person makes a good faith attempt to remove or correct those signs. A person who learns that printed political advertising other than a political advertising sign that has been distributed does not include the disclosure required by Subsection (a) or includes a disclosure that does not comply with Subsection (a) is not required to attempt to recover the political advertising and does not commit a continuing violation of this subsection as to any previously distributed political advertising.

(d) This section does not apply to:

- (1) tickets or invitations to political fund-raising events;
- (2) campaign buttons, pins, hats, or similar campaign materials; or
- (3) circulars or flyers that cost in the aggregate less than \$500 to publish and distribute.

(e) A person who violates this section is liable to the state for a civil penalty in an amount determined by the commission not to exceed \$4,000.

§ 255.003. UNLAWFUL USE OF PUBLIC FUNDS FOR POLITICAL ADVERTISING. (a) An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising.

(b) This section does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure.

(c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

§ 255.0031. UNLAWFUL USE OF INTERNAL MAIL SYSTEM FOR POLITICAL ADVERTISING. (a) An officer or employee of a state agency or political subdivision may not knowingly use or authorize the use of an internal mail system for the distribution of political advertising.

(b) Subsection (a) does not apply to:

- (1) the use of an internal mail system to distribute political advertising that is delivered to the premises of a state agency or political subdivision through the United States Postal Service; or
- (2) the use of an internal mail system by a state agency or municipality to distribute political advertising that is the subject of or related to an investigation, hearing, or other official proceeding of the agency or municipality.

(c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

(d) In this section:

(1) "Internal mail system" means a system operated by a state agency or political subdivision to deliver written documents to officers or employees of the agency or subdivision.

(2) "State agency" means:

(A) a department, commission, board, office, or other agency that is in the legislative, executive, or judicial branch of state government;

(B) a university system or an institution of higher education as defined by Section 61.003, Education Code; or

(C) a river authority created under the constitution or a statute of this state.

Rules and Advisory Opinions:

The problem in the Election Code is it only addresses the misuse of public funds, not resources and the misuse of an internal mail system, not an electronic mail system. Section 255.003 does not include e-mail in the definition of political advertising, nor does Section 255.0031, titled **Unlawful Use of Internal Mail System for Political Advertising**, include an electronic mail system as an internal mail system. The exclusion of these two subjects makes it legal for any employee or officer of a state agency or political subdivision to use a publicly funded computer to send out e-mails supporting or opposing candidates and/or measures.¹²¹

The questions the TEC often receive are whether the use of public resources for political advertising is equivalent to using public funds for political advertising, therefore violating Section 255.003 of the Texas Election Code? If so would using a computer owned by a state agency or a political subdivision to distribute a communication made by e-mail supporting or opposing a candidate and/or measure constitute as a misuse of public funds for political advertising?¹²²

In September of 1992 the commission was asked whether Section 255.003 of the Election Code prohibited the use of a school districts internal mail system for the distribution of political advertising. Since a school district's officers and employees of the district are prohibited from spending or authorizing the spending of public funds for political advertising, the issue being raised was whether or not the prohibition extends, not only to direct expenditures of public funds for distributing political advertising, but also to the use of an existing internal mail system. The TEC concluded in Ethics Advisory Opinion No. 45 any method of distribution involving the use of school district employees on school district time or school district equipment would fall under this prohibition.¹²³

In May of 2002 the TEC further emphasized Ethics Advisory Opinion No. 45 with Ethics Advisory Opinion No. 443. The question being raised: Could a school district allow candidates seeking election to a school district's board of trustees place campaign flyers in an area of a school with no public access? This question presented two issues: (1) Whether the situation described involves the "spending" of public funds and, (2) if so, would the public funds be spent "for" political advertising.

The TEC determined in Ethics Advisory Opinion No. 443 since the placement of campaign flyers would be in a place not accessible to the public then the act of placing those flyers would be presumably done on school time by school employees. Furthermore the "spending" of public funds, the TEC continued, would also include the use of facilities maintained by a political subdivision. The placement of those flyers anywhere besides a public forum would be considered "spending" public funds.

In 2006 the TEC wrestled with the question of whether or not the definition of political advertising was to include e-mails. After thoroughly studying the legislative history, the TEC determined the legislature clearly considered including e-mails in the definition of political advertising and chose not to.

The TEC came to this conclusion because H.B. 1606 (legislation amending the definition of political advertising in 2003) in its original form specifically included both e-mails and internet websites to the definition of political advertising. However, when H.B.1606 went through the legislative process the final version did not include e-mails in the definition.

Based on this history the TEC passed a rule in July of 2006 stating the definition of political advertising does not include a communication made by e-mail.¹²⁴ The commission has since asked the legislature for guidance through its 2007 legislative task force recommendations to clarify whether or not e-mail should be included as political advertising.

Earlier in the 80th Legislative Session Representative Phil King attempted to clarify this issue by filing House Bill 2508. This bill amended the **Unlawful Use of an Internal Mail System for Political Advertising** section of the Election Code. Currently this section makes it illegal for an officer or an employee of a political subdivision to use an internal mail system to distribute political advertising. Rep. King's bill would have extended this restriction to the electronic mail system with-in a political subdivision and would have included "political communication" instead of "political advertising".¹²⁵ This bill passed out of the Committee on Elections, but did not pass through the process.

Below is the TEC rule passed in July 2006 clarifying the definition of political advertising:

Chapter 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES
Subchapter A. GENERAL RULES
§ 20.1. Definitions

The following words and terms, when used in *Title 15 of the Election Code*, in this chapter, Chapter 22 of this title (relating to Restrictions on Contributions and Expenditures), and Chapter 24 of this title (relating to Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations), shall have the following meanings, unless the context clearly indicates otherwise.

(1) Campaign communication--*The term does not include a communication made by e-mail*

(13) Political advertising:

(A) A communication that supports or opposes a political party, a public officer, a measure, or a candidate for nomination or election to a public office or office of a political party, and:

- (i) is published in a newspaper, magazine, or other periodical in return for consideration;**
- (ii) is broadcast by radio or television in return for consideration;**
- (iii) appears in a pamphlet, circular, flier, billboard, or other sign, bumper sticker, or similar form of written communication; or**
- (iv) appears on an Internet website.**

(B) *The term does not include a communication made by e-mail.*

Opinions:

The committee agrees with the TEC, using public resources is equivalent to using public funds. The committee also believes using publically funded computers to send e-mails supporting or opposing a candidate is a misuse of public funds. However, the committee is in concurrence with the commission while using a publically funded computer to send e-mails supporting or opposing a candidate is a misuse of public funds, e-mails do not need to be included in the definition of political advertising.

The committee is taking this stance because one must take in consideration the **Required Disclosure on Political Advertising** statute. If e-mail was included in the political advertising definition, the enforcement of disclosure statements would apply to all e-mails, including personal e-mails. The committee feels this would be a gross over step in its legislative responsibilities, not only on a state level, but constitutionally as well.

The committee believes to properly remedy this issue; the 81st legislature should focus on Section 255.0031 of the Election Code. While creating the solution the committee would like the legislature expresses its intent loud and clear, so not to be misinterpreted. This recommendation for instance would not include members sending or receiving e-mails to staff regarding pieces of legislation being carried or any officer or employee of a political subdivision communicating through e-mail in regards to everyday business, which might discuss ordinances and/or legislation.

The Mayor of Haltom City, Bill Landford, expressed his concern at the committee hearing addressing this issue. He of course was aware of the offsets and abuse of public resources, but his primary concern was the application of the solution. Mayor Landford did not want anyone to be mislabeled for being unethical, while fully intending to follow the law. For instance receiving e-mails or sending e-mails regarding an election in general or everyday e-mails received or sent asking for the opinion of or facts on an ordinance. The committee recognizes the Mayor's concerns and would like to assure political subdivisions any solution suggested will take these concerns in full consideration and guarantees the intent of any solution will be to prohibit the use of publically funded computers from being used to send e-mails strictly supporting or opposing candidates or measures.

Recommendations:

After careful consideration the committee recommends the 81st Legislature revisit language in H.B. 2508 of the 80th session and include an electronic mail system to the prohibition of the use of an internal mail system for the distribution of political advertising. This would prohibit the use of publically funded computers or "resources" from being used by employees or officials of political subdivisions from sending e-mails supporting or opposing candidates and/or measures.

Charge No. 8

Monitor the agencies and programs under the committee's jurisdiction.

Office of the Secretary of State:

The Secretary of State serves as the chief election official for the State of Texas. Under the Secretary's direction the Elections Division provides assistance and advice to election officials on the proper conduct of elections. This includes hosting seminars and elections schools, providing calendars, ballot certification, primary election funding, and legal interpretations of election laws to election officials. It also provides assistance to the general public on voter registration and other election issues.

The Elections Division administers and maintains the Texas Election Administration Management (TEAM) System, which is an online, HAVA compliant, voter registration application designed for county officials to maintain accurate and efficient voter registration rolls.¹²⁶ The Committee on Elections had the pleasure of working closely with the Secretary's Elections Division this interim.

There were many opportunities for continued education concerning elections this interim. Committee staff attended four election law seminars, numerous in-house meetings with the Secretary of State's Office and observed the returns of three elections, including the March primary. With the approval and encouragement of the Chair, the chief clerk also coordinated numerous meetings between Ann McGeehan, the Director of the Elections, and the Committee member's staff. These meetings gave every office within the committee the opportunity to ask questions and keep up with projects and issues pertaining to the Elections Division.

The Elections Division was able to provide the committee with a briefing outlining the major projects and events happening throughout the interim or will happen in the upcoming months. For the readers clarification; the issues with reference to TEAM, HAVA and the Super Precinct pilot program have already been addressed in previous charges and will not be reexamined.

Briefing from the Elections Division of the Office of the Secretary of State:

Overview of Primary Election

The presidential primary election on March 4, 2008 yielded massive statewide voter turnout. While presidential primaries consistently garnered increased public interest, the race for the Democratic Party presidential nomination turned national focus to the Texas primary election.

To that end, the Elections Division fielded massive quantities of phone calls (234,483 incoming calls during Jan/Feb/Mar 2008) and responded to emails (5,294 during

Jan/Feb/Mar 2008) from voters around the state and country. The legal staff spent considerable time discussing primary election procedures with voters, party officials and county election officials. The voter registration staff handled calls from voters inquiring as to their voter registration status. Email inquiries pertained to many facets of the primary election voting process.

On March 4, 2008, the office staffed its customary, toll-free, Election Day phone bank. The phone calls were at the maximum level of queue for the majority of the day and evening. In addition, staff supported voters and election officials involved in many primary runoff elections statewide.

Overview of May 10, 2008 Election

The May 10, 2008 election featured statewide local elections, as conducted by a large number of cities, school districts, and various types of water districts. Secretary of State Elections Division staff fielded many legal and TEAM-related questions in advance of May 10th, as entities prepared in the weeks leading to Election Day.

On May 10, 2008, the office staffed its customary, toll-free, Election Day phone bank. Phone volume for this Election Day was consistent and represented the statewide nature of the elections taking place. On the heels of a successful primary election, the May 10th election provided an opportunity to assist many local political subdivisions in a timely and professional way.

Preparing for Presidential Election

The Secretary of State's Office is preparing for the November 4, 2008 election turnout to parallel the historic turnout seen in the primary. They are creating an additional phone bank with temporary employees to support call volume surrounding the election; this phone bank will be managed and trained by permanent staff.

The November election law and procedure calendar has been added to the Secretary of State website; this detailed legal schedule provides extensive information to election officials, voters, and candidates relating to pertinent deadlines and legal procedures. A series of Frequently Asked Questions and Answers relating to the November 4, 2008 election are also posted on the website, www.sos.state.tx.us.

The Secretary of State's Office is also working with several state agencies to train agency employees to serve as state inspectors for the November election. A higher number of inspector requests for this election are anticipated and the office has tailored its preparation accordingly. The office plans to train 200 individuals, so that between 100 and 150 inspectors can be deployed statewide on November 4, 2008. Inspectors serve as official observers who monitor the conduct of elections and file written reports of their findings.

Pilot Program for Emailing Ballots to Overseas Military Voters

Senate Bill 90 requires the Secretary of State to establish a pilot program for the November 4, 2008 election. Under the program, participating counties may email blank ballots and related balloting materials (“balloting materials”) to qualified overseas military voters. Participation in the program is open to counties who wish to participate and feel comfortable using the technology required to do so. As of mid-July, Bexar, Brazoria, Dallas, Victoria, and Zavala Counties will participate. This is the first incarnation of this pilot program, and notably permits the transmittal of balloting materials to qualified voters who request that these materials are emailed to them because they have not received the ballot provided by postal mail. These voters must mark their ballots and return them by postal mail. This program has the goal of enhancing the efficiency of the voting process in overseas military situations, which often prove difficult for the time-sensitivity of ballot return.

With regards to implementation of the program, the Office of the Secretary of State has established procedures in the form of administrative rules. These rules are currently in public comment period in the Texas Register, following their July 11, 2008 publication. Staff is currently preparing the preclearance submission of these rules and procedures to the U.S. Department of Justice, which has pre-cleared the bill which created the program. Finally, the office has sent a detailed explanatory memo to all counties to garner participants for the program while detailing the program’s provisions.

Address Confidentiality Program

Senate Bill 74 created an address confidentiality program to assist victims of family violence, sexual assault, or stalking, and authorized the Secretary of State to adopt administrative rules as needed to administer voting procedures for participants in this program. The program facilitates the goal of confidentiality by requiring the creation of a confidential voting roster which is explicitly protected from public disclosure. Voters who avail themselves of these procedures then vote by mail, using an alternate mailing address created by the Office of the Attorney General.

With regards to implementation of the program, the Elections Division has worked extensively with the Office of the Attorney General to discuss the procedures necessary to successfully implement the program. The Office of the Secretary of State has drafted administrative rules which outline these procedures, which are currently in public comment period in the Texas Register, following their July 11, 2008 publication. Staff has submitted a preclearance submission of these rules and procedures to the US Department of Justice, which has pre-cleared the bill which created the program.

Voting System Parallel Monitoring Project

The Elections Division will audit three counties on Election Day, November 4, 2008, to test the accuracy of their voting systems. The audit counties are: Bexar, Guadalupe and Travis Counties. These counties use separate vendors, therefore, the inquiry will procure valuable data from a cross-section of voting machines used across the state. The audit

will take place as programmed units are selected randomly, pulled out, and tested during the hours that polls are open on Election Day.

Online Poll Worker Training

The online poll worker training program developed by the Office of the Secretary of State has been very well-received throughout the state. To enhance this program for November, the office added a voting system component to the existing online poll worker training. This year a separate component for each certified voting system was developed and instructs workers on set-up, testing, voting, and closing down the polls.

Primary Election Financing

State primary funds are issued to county chairs overseeing the conduct of primary elections, in accordance with Chapter 173 of the Texas Election Code. These funds, as well as funds collected from candidates for filing fees, are used to pay primary election expenses.

Upon submission of a primary election cost estimate form, the Office of the Secretary of State reviews the estimate making sure requested funds are in compliance with Chapter 173 of the Texas Election Code and the Administrative Rules Chapter 81 Subchapter F adopted by this agency.

- Seventy-five (75%) of the approved estimated cost is advanced to the chair to cover Election Day and administrative expenses. The county chair will receive a pre-populated estimated cost report based on expenses report from 2006 Primary Final Report for Primary and Runoff expenses. If a primary and/or runoff were not held in that county, the chair would submit a completed estimated report for the primary and/or runoff.
- After the primary and runoff, chairs remit a final cost report of actual expenses. This office then remits the remaining twenty-five (25%) or, if upon calculating the actual expenses a surplus is due, the excess funds are returned to the primary fund.

The Office of the Secretary of State is currently processing the 2008 Final Cost Reports, but on the following page is a summary of approved 2006 primary costs.

2006 Election Day Cost	Primary	Runoff Primary	Total
Ballot Printing	\$1,113,595.50	\$366,818.24	\$1,480,413.74
Electronic voting system programming	\$1,132,989.05	\$691,373.33	\$1,824,362.38
Notice publications	\$18,883.25	\$11,986.85	\$30,870.10
Election poll supplies	\$774,663.31	\$279,453.79	\$1,054,117.10
Voting machine rental	\$137,144.30	\$67,111.50	\$204,255.80
Voting Equip & transport	\$359,200.02	\$162,635.09	\$521,835.11
Poll rental	\$324,666.24	\$77,592.26	\$402,258.50
Election workers	\$3,309,863.56	\$1,470,802.16	\$4,780,665.72
Central Counting Stations Workers	\$68,145.09	\$29,565.09	\$97,710.18
Technical & Site Support	\$279,673.15	\$88,036.88	\$367,710.03
Contract Services Admin Fee	\$545,114.25	\$241,199.91	\$786,314.16
Miscellaneous	\$569,466.10	\$258,221.04	\$827,687.14
Total Primary Election Day Exp.	\$8,633,403.81	\$3,744,796.14	\$12,378,199.94

2006 Administrative Costs

Office rent	\$188,380.02
Office personnel	\$827,320.04
Administrative payroll taxes	\$97,480.74
Phone & Utilities	\$99,011.85
Furniture && equipment rental	\$12,674.53
Office Equipment	\$60,807.95
Office supplies	\$79,784.40
Postage	\$36,795.64
Legal fees	\$50,280.47
Ballot Re-Print	\$22,539.17
Miscellaneous	\$60,213.44
Total Administrative Cost	\$1,535,288.26
Chair Compensation	\$281,344.71
SOS Seminar Travel Expenses	\$65,373.63
Total Administrative Expenses	\$1,535,288.26
Total 2006 Primary & Runoff Cost	\$14,260,206.54

Changing of the Guard

On a side note: Secretary of State Phil Wilson stepped down as Secretary of State in July of 2008 to pursue other endeavors. Governor Perry appointed Esperanza "Hope" Andrade to take up the mantel as Texas' 107th Secretary of State. The committee welcomes Madam Secretary to her new office and is looking forward to working with her and her staff.

Texas Ethics Commission:

In 1991 the Texas Ethics Commission (TEC) was created by a constitutional amendment approved by Texas' voters. The commission is made up of eight commissioners serving for four year terms. Four are appointed by the governor, two are appointed by the Lieutenant Governor and two are appointed by the Speaker of the House. Each party in the Senate and the House has members representing them by submitting lists of nominees to the proper state officials for appointment, making the commission a bi-partisan effort.¹²⁷

This commission was given both statutory and constitutional duties to administer and enforce. These duties range from, but are not limited to political contributions and expenditures, political advertising, lobbyist registration, reports and activities, personal financial disclosure of state officers, conduct of state officers and employees, recommending the salary of members of the legislature, the Lieutenant Governor and the Speaker of the House (subject to approval by the voters) and for setting the per diem of the members of the Legislature and of the Lieutenant Governor. Any other powers or duties of the commission are to be determined by the Legislature.¹²⁸

In order to monitor this agency, committee staff attended bi-monthly commission hearings and had numerous one on one meetings with both the general counsel and the executive director of the Texas Ethics Commission this interim. The TEC reported to the committee on the effects incurred by H.B. 89 by Branch, the increased number of complaints and the number of new attorneys hired as a result of these complaints, the number of rules adopted this year, and the number of Ethics Advisory Opinions issued by the TEC.

HB 89-General-Purpose Political Committees:

H.B. 89 by Representative Branch adds Section 254.164 to the Election Code which applies to general-purpose political committees, including county executive committees. The bill provides that the TEC may not impose a civil penalty on a general-purpose political committee for a reporting violation if the committee did not exceed certain contribution or expenditure thresholds during a particular reporting period. Specifically, the TEC may not impose a civil penalty for a reporting period if the report in question shows that the general-purpose political committee: 1) did not accept political contributions totaling \$3,000 or more, 2) did not accept political contributions from a single person totaling \$1,000 or more, or 3) did not make or authorize political expenditures totaling \$3,000 or more during the reporting period covered by the report or during either of the two reporting periods preceding the report. This bill became effective September 1, 2007.

As directed by SECTION 2 of H.B. 89 the TEC has been tracking the impacts this act would have and will give a complete report to the Legislative body no later than

December 31, 2008. To fulfill the requirements of this interim charge TEC has provided the committee with the number of general-purpose committees receiving a waiver under H.B. 89 from the dates of September 1, 2007 through August 11, 2008. This information includes the type of report for which the waiver was granted, the number of waivers given to each general-purpose committee, and the total number of committees receiving waivers since the law became enacted. This summary was provided by the TEC.

SUMMARY			
Rpt_ Type	Number of Reports	Dollars	Rpt. Definition
MPAC	64	\$32,000.00	monthly filing general-purpose committee
JAN	40	\$20,000.00	January semiannual
JUL	31	\$15,600.00	July semiannual
E30	11	\$6,500.00	30th day before the election
E8	15	\$18,500.00	8th day before the election
RUN	6	\$4,900.00	8th day before runoff election
A10	2	\$2,000.00	10th day after treasurer termination
FIN	1	\$500.00	final/dissolution report
OTH	0	\$0.00	other
Totals	170	\$100,000.00	

Texas Ethics Commission Sworn Complaints:

During 2008 the number of sworn complaints has continued to increase. These complaints have placed a corresponding burden on the legal division to timely process, investigate, and prepare sworn complaints for resolution by the Commission. To help alleviate this burden Governor Perry recently approved a grant allowing the TEC to hire two additional attorneys and one administrative support personal.

The table on the next page illustrates the number of sworn complaints filed since 1992:

**SWORN COMPLAINTS FILED SINCE
CALENDAR YEAR 1992**

CALENDAR YEAR	NUMBER OF COMPLAINTS FILED	PERCENTAGE INCREASE/DECREAS E
1992	49	
1993	42	14 % decrease
1994	88	110 % increase
1995	66	25 % decrease
1996	88	33 % increase
1997	100	14 % increase
1998	103	3 % increase
1999	42	59 % decrease
2000	93	121 % increase
2001	75	19 % decrease
2002	141	88 % increase
2003	91	35 % decrease
2004	217	138 % increase
2005	251	16 % increase
2006	270	8 % increase
2007	238	12 % decrease
2008 (As of 8/11/08)	302	

*This table was provided by the TEC.

Rulemaking and Advisory Opinions:

During this interim the TEC made many amendments to their administrative rules and issued a number of advisory opinions. Thirty-three rules were adopted between June 2007 and December 2007. In this same time period six rules were repealed, and as of January 2008 through August 11, 2008 the TEC has adopted 12 rules. To date there are nine administrative rules being considered, but have yet to be adopted. Only three advisory opinions were issued between June 2007 and December 2007 by the TEC. As of August 11 there have been four advisory opinions issued for 2008.

Below lists the administrative rules added and repealed during the 80th Legislative interim followed by a brief summary of the advisory opinions issued. This information was provided by the TEC.

Rules Adopted in 2007 (June 2007 through December 2007).

- § 18.7. Timely Reports and Complete Reports (General Rules Concerning Reports)
- § 20.1. Definitions (General Rules)
- § 20.19. Reports Must Be Filed on Official Forms (General Rules)
- § 20.20. Timeliness of Action by Electronic Filing (General Rules)
- § 20.21. Due Dates on Holidays and Weekends (General Rules)
- § 20.56. Reporting a Pledge of a Contribution (General Reporting Rules)
- § 20.62. Reporting Staff Reimbursement (General Reporting Rules)
- § 20.65. Reporting No Activity (General Reporting Rules)
- § 20.211. Semiannual Reports (Reporting Requirements for a Candidate)
- § 20.213. Pre-Election Reports (Reporting Requirements for a Candidate)
- § 20.215. Runoff Report (Reporting Requirements for a Candidate)
- § 20.217. Modified Reporting (Reporting Requirements for a Candidate)
- § 20.221. Special Pre-Election Report by Certain Candidates (Reporting Requirements for a Candidate)
- § 20.223. Form and Contents of Special Pre-Election Report (Reporting Requirements for a Candidate)

- § 20.305. Appointing an Assistant Campaign Treasurer (Reports by a Specific-Purpose Committee)
- § 20.307. Name of Specific-Purpose Committee (Reports by a Specific-Purpose Committee)
- § 20.317. Termination Report (Reports by a Specific-Purpose Committee)
- § 20.323. Semiannual Reports (Reports by a Specific-Purpose Committee)
- § 20.325. Pre-Election Reports (Reports by a Specific-Purpose Committee)
- § 20.327. Runoff Report (Reports by a Specific-Purpose Committee)
- § 20.329. Modified Reporting (Reports by a Specific-Purpose Committee)
- § 20.333. Special Pre-Election Report by Certain Specific-Purpose Committees (Reports by a Specific-Purpose Committee)
- § 20.335. Form and Contents of Special Pre-Election Report by a Specific-Purpose Committee Supporting or Opposing Certain Candidates (Reports by a Specific-Purpose Committee)
- § 20.417. Termination Report (Reporting Requirement for a General-Purpose Committee)
- § 20.423. Semiannual Reports (Reporting Requirement for a General-Purpose Committee)
- § 20.425. Pre-Election Reports (Reporting Requirement for a General-Purpose Committee)
- § 20.427. Runoff Report (Reporting Requirement for a General-Purpose Committee)
- § 20.429. Option to File Monthly (Reporting Requirement for a General-Purpose Committee)
- § 20.431. Monthly Reporting (Reporting Requirement for a General-Purpose Committee)
- § 20.437. Form and Contents of Special Pre-Election Report (Reporting Requirement for a General-Purpose Committee)
- § 26.2. Newsletter of Public Officer of a Political Subdivision (Political and Legislative Advertising)

§ 34.43. Compensation and Reimbursement Threshold (Registration Requirement)

§ 50.1. Legislative Per Diem (Legislative Salaries and Per Diem)

Rules Repealed in 2007 (June 2007 through December 2007).

§ 20.25. Affidavit (General Rules)

§ 20.27. Electronic Filing of Telegram Reports (General Rules)

§ 20.31. Use of Political Contributions for Contributions to Speaker Candidate (General Rules)

§ 34.19. Conflicts of Interest (General Provisions)

§ 34.61. Registration Fee (Completing the Registration Form)

§ 34.62. Temporary Increase in Registration Fee (Completing the Registration Form)

Rules Adopted in 2008 (January 2008 through August 11, 2008).

§ 8.3. Subject of an Advisory Opinion

§ 20.13. Out-of-State Committees (General Rules)

§ 20.29. Information about Out-of-State Committees (General Rules)

§ 20.50. Total Political Contributions Maintained

§ 20.220. Additional Disclosure for the Texas Comptroller of Public Accounts

§ 20.435. Special Pre-Election Reports by Certain General-Purpose Committees

§ 34.11. Attribution of Expenditure to More Than One Person; Reimbursement of Lobby Expenditure

§ 45.1. Application (Texas Facilities Commission and Comptroller of Public Accounts)

§ 45.3. Definitions (Comptroller of Public Accounts)

§ 45.5. Definitions (Texas Facilities Commission)

§ 45.7. Rebates (Comptroller of Public Accounts)

§ 45.9. Rebates (Texas Facilities Commission)

Rules Considered but Not Yet Adopted in 2008.

§ 12.57. Contents of a Complaint (Filing and Initial Processing Of a Complaint)

§ 20.577. Reporting Schedule for a Candidate for State Chair

§ 22.33. Expenditure Limits of the Judicial Campaign Fairness Act

§ 34.5. Certain Compensation Excluded (General Provisions)

§ 34.21. Contingent Fees for Influencing Purchasing Decisions (General Provisions)

§ 34.22. Contingent Fees for Influencing Purchasing Decisions (General Provisions)

§ 34.45. Entity Registration

§ 34.65. Compensation Reported by Lobby Firm Employee

§ 34.85. Individual Reporting Expenditure by Entity

Ethics Advisory Opinions Issued in 2007 (June 2007 through December 2007).

Ethics Advisory Opinion No. 475

The making of charitable contributions according to the proposed solicitation program is not a permissible solicitation expense for purposes of Section 253.100(b) of the Election Code.

Ethics Advisory Opinion No. 476

The attached newsletter is “political advertising” as defined in Section 251.001(16) of the Election Code and therefore public funds may not be used to pay for the newsletter.

Ethics Advisory Opinion No. 477

A former employee of a regulatory agency would not violate Government Code Section 572.054(b) by working on a private company’s bid for an agency contract that utilizes the standard specifications as described in this request that the requestor participated in writing as an agency employee.

Ethics Advisory Opinions Issued in 2008.

Ethics Advisory Opinion No. 478

The use of political contributions to pay a premium of a “judges’ claims made professional liability insurance policy” that only covers expenses incurred in connection with claims or lawsuits brought against a judge in his official capacity as a public officeholder does not constitute a personal use.

Ethics Advisory Opinion No. 479

Placing a candidate on notice that a general-purpose committee will base its decision on whether or not to support the candidate on the candidate’s responses to the specific questions listed above would constitute legislative bribery under Section 302.032 of the Government Code. Whether a candidate has been placed on such notice is a fact question and, as we have stated in previous opinions, an advisory opinion cannot resolve fact issues.

The legal value of an Ethics Advisory Opinion is to provide a defense to prosecution for activities that, in the opinion of the Ethics Commission, are not in violation of the laws under the jurisdiction of the Ethics Commission. We cannot provide that type of defense in this request because we cannot anticipate the different circumstances in which the specific questions listed above may be asked.

Ethics Advisory Opinion No. 480

Title 15 of the Election Code does not prohibit an officeholder from using political contributions to compensate a county employee for vacation time that the employee was unable to take due to carrying out his or her county responsibilities on assignments connected with the activities of the officeholder’s office. The officeholder may use personal funds to make the payment to compensate the employee for the lost vacation time and may seek reimbursement from political contributions provided that the expenditure from personal funds is reported as required by title 15 of the Election Code. The court employee may accept the compensation at issue under Section 36.10(a) (2) of the Penal Code. It is important to note that if the judge is subject to the Judicial Campaign Fairness Act, the reimbursement at issue must be in compliance with the limits set by the Act.

Commission Recommendations for Legislative Action:

The Texas Ethics Commission is currently in the process of making Legislative Recommendations to the 81st Legislature. Chairing the Legislative Task Force is Commissioner Ross Fischer. He is accompanied by fellow Commissioners Jim Graham, Paula M. Mendoza, and Wilhemina Delco. Commissioner Fisher stated at the Commissions August 15, 2008 hearing the Task's Force goal was to update the recommendations at the October meeting, discuss and make any necessary changes and then take a final vote on the recommendations at the December meeting. This report will be available to the whole House on or before December 31, 2008.

Recommendations:

The Committee recommends continuing its work with the Texas Ethics Commission and with the Office of the Secretary of State to ensure all projects are a continued success.

ENDNOTES

¹ <http://www.sos.louisiana.gov/tabid/157/Default.aspx>

² Douglas W. Jones, *A Brief Illustrated History of Voting*, (The University of Iowa, Department of Computer Science, 2001) 3

³ *id.* 2

⁴ *id.* 3

⁵ *id.* 5

⁶ *id.* 5

⁷ *id.* 12

⁸ *id.* 7

⁹ *id.* 11

¹⁰ www.eac.gov/News

¹¹ www.eac.gov/News/eac-announces-intention-to-suspend-systest-labs/base_view

¹² HAVA SECTION 301 *Voting System Standards*

¹³ University of California, *Overview of Red Team Reports for Top to Bottom Review*, Matt Bishop Principle Investigator (University of California, Davis)

¹⁴ *id.*

¹⁵ *id.*

¹⁶ *id.*

¹⁷ *id.*

¹⁸ *id.* 8

¹⁹ <http://www.pewcenteronthestates.org/uploadedFiles/audit%20trail.pdf>

²⁰ Sharon Dunn, Director of Elections Cobb County, Georgia, Pilot Project: Voter Verifiable Paper Audit Trail (Cobb County, Georgia December 21, 2006) 3

²¹ *id.* 3

²² *id.* 6

²³ *id.* 14

²⁴ *id.* 15

²⁵ *id.* 25

²⁶ *id.* 25

²⁷ Testimony given by Michael Shamos to The U.S. Senate Committee of Rules and Administration on July 25, 2007

²⁸ Arthur Herman, *How the Scots Invented the Modern World* (Three Rivers Press, New York, New York 2001), 39-40.

²⁹ West a Thomson Business, *Blacks Law Dictionary* (Thomson and West, St. Paul, MN 2004), 558.

³⁰ Texas House of Representatives Committee on Elections, *Interim Report to the 80th Texas Legislature* (House Reproduction, 2006), 16.

³¹ Amy Young, *Memo to the Honorable Mary Denny Chair of Elections, Subject: Vote Fraud in Texas* (June 14, 2006), 2.

³² Amy Young, *Memo to the Honorable Mary Denny Chair of Elections, Subject: Vote Fraud in Texas* (June 14, 2006), 2.

³³ Pre-Election Day & Absentee Voting by Mail Rules; <http://www.electionline.org>

³⁴ Texas Election Code, Chapter 82: Eligibility for Early Voting

³⁵ Texas Election Code, Chapter 84: Applications for Ballot

³⁶ Provisional Ballot Verification; <http://www.electionline.org>

³⁷ Memorandum to Members of the House Committee on Elections, from Ann McGeehan, Director of Elections Re. Overview of Provisional Voting Laws.(2008)

³⁸ *id.*

³⁹ Memorandum to Secretary Phil Wilson from Ann McGeehan, Director of Elections, Purging Voter Registration Files (2008)

⁴⁰ *id.*

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- ⁴¹ *id.*
- ⁴² Memorandum to Secretary Roger Williams from Ann McGeehan, Director of Elections, Information Requested at the April 26, 2006 Interim Hearing
- ⁴³ Texas State Auditors Office, An Audit Report on The Voter Registration System at the Texas Secretary of State's Office, (Texas State Auditors Office, November 2007) 7
- ⁴⁴ <http://www.sos.state.tx.us/elections/historical/70-92.shtml>
- ⁴⁵ <http://www.caller.com/news/2007/oct/10/refugio-commissioner-resigns-faces-jail-time>
- ⁴⁶ Texas State Auditors Office, An Audit Report on The Voter Registration System at the Texas Secretary of State's Office, (Texas State Auditors Office, November 2007) i
- ⁴⁷ *id.* 2
- ⁴⁸ *id.* 2
- ⁴⁹ *id.* 5
- ⁵⁰ *id.* 1
- ⁵¹ *id.* 7
- ⁵² *id.* 8
- ⁵³ *id.* 7
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- ⁵⁵ *id.* 8
- ⁵⁶ Amy Young, *Memo to the Honorable Mary Denny Chair of Elections, Subject: Vote Fraud in Texas* (June 14, 2006), 3.
- ⁵⁷ <http://www.electionline.org>
- ⁵⁸ Syllabus; *Crawford Et Al. V. Marion County Election Board Et Al. October Term, 2007*, Argued January 9, 2008- Decided April 28, 2008. 1
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- ⁶¹ Elections Division, Florida SOS, State of Florida Identification Background, provided by Maria Matthews, Assistant General Counsel, Elections Division, Florida Secretary of State
- ⁶² Jeffery Milyo, The Effects of Photographic Identification on Voter Turnout in Indiana: A County -Level Analysis, (Publication from Institute of Public Policy, University of Missouri, November 2007) 14
- ⁶³ R. Michael Alvarez, Delian Baily, Jonathon Katz, The Effect of Voter Identification Laws on Turnout (CALTECH/MIT Voting Technology Project) 2
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- ⁶⁷ Texas Secretary of State, Elections Division, Monitoring of HAVA Implementation Interim Charge: Briefing from the Elections Division of the Secretary of State (Texas Secretary of State: Austin, TX. 2008) 1
- ⁶⁸ *id.* 2-3
- ⁶⁹ Section 301 (d) of HAVA
- ⁷⁰ Texas Secretary of State, Elections Division, Monitoring of HAVA Implementation Interim Charge: Briefing from the Elections Division of the Secretary of State (Texas Secretary of State: Austin, TX. 2008) 4
- ⁷¹ *id.* 6-7
- ⁷² *id.* 7
- ⁷³ *id.* 7-8
- ⁷⁴ *id.* 8
- ⁷⁵ *id.* 8-9
- ⁷⁶ Section 303 (B) of HAVA
- ⁷⁷ Texas State Auditor's Office, An Audit Report on the Voter Registration System at the Texas Secretary of State's Office. Report No. 08-012 (Texas State Auditor's Office: Austin, TX November 2007) i-ii
- ⁷⁸ *id.* ii
- ⁷⁹ *id.* ii-iii
- ⁸⁰ *id.* iii
- ⁸¹ *id.* 7
- ⁸² Texas Secretary of State, Elections Division, Monitoring of HAVA Implementation Interim Charge: TEAM, (Texas Secretary of State: Austin, TX; 2008) 2

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- ⁸³ *id.* 1
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- ⁸⁶ Texas Secretary of State, Elections Division, Monitoring of HAVA Implementation Interim Charge: Briefing from the Elections Division of the Secretary of State (Texas Secretary of State: Austin, TX. 2008) 5
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- ⁸⁸ Electionline.org Briefing, Helping Americans Vote: Poll Workers, (The PEW Center on the States; Washington, D.C., 2007) 1
- ⁸⁹ *id.* 2
- ⁹⁰ Chapter 32 of the Election Code, Subchapter F: Training
- ⁹¹ Chapter 32 of the Election Code, Subchapter E: Compensation
- ⁹² Chapter 32 of the Election Code, Subchapter E: Compensation
- ⁹³ Chapter 32 of the Election Code, Subchapter A. Appointment of Election Judges
- ⁹⁴ *id.*
- ⁹⁵ Chapter 32 of the Election Code, Subchapter F: Training
- ⁹⁶ Electionline.org Briefing, Helping Americans Vote: Poll Workers, (The PEW Center on the States; Washington, D.C., 2007) 12
- ⁹⁷ Rachael V. Cobb, Ph.D. Assistant Professor of Government, Suffolk University, Strategies for Success: Starting a College Poll Worker Program (Suffolk University) 1
- ⁹⁸ *id.* 1
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- ¹⁰¹ Help Houston Vote, The Help America Vote College Poll Worker Program (A Project of Texans Together Education Fund and the U.S. Elections Assistance Commission) 2
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- ¹¹¹ Office of Secretary of State, Elections Division, Monitoring Agencies and Programs Under Committee Jurisdiction (Austin, TX: Office of Secretary of State, Elections Division, 2008) 2.
- ¹¹² House Research Organization, Senate Bill 1 Bill Analysis (Austin, Texas: House Research Organization, 1991)
- ¹¹³ Texas Ethics Commission, Ethics Advisory Opinion No. 185 (Austin, Texas: Texas Ethics Commission, 1994, 2)
- ¹¹⁴ Texas Ethics Commission, Ethics Advisory Opinion No. 158 (Austin, Texas: Texas Ethics Commission, 1993, 1)
- ¹¹⁵ Texas Ethics Commission, Ethics Advisory Opinion No. 160 (Austin, Texas: Texas Ethics Commission, 1993, 1)
- ¹¹⁶ Texas Ethics Commission, Ethics Rule 34.5 (Austin, Texas: Texas Ethics Commission)
- ¹¹⁷ Texas Ethics Commission, Ethics Advisory Opinion No. 185 (Austin, Texas: Texas Ethics Commission, 1994, 1-2)
- ¹¹⁸ Texas Ethics Commission, Ethics Advisory Opinion No. 341 (Austin, Texas: Texas Ethics Commission, 1996, 1)
- ¹¹⁹ Texas Ethics Commission, Ethics Rule 34.21 (Austin, Texas: Texas Ethics Commission)
- ¹²⁰ Texas Ethics Commission, Ethics Advisory Opinion No. 341 (Austin, Texas: Texas Ethics Commission, 1996, 1)
- ¹²¹ Chapter 255, Texas Election Code
- ¹²² Texas Ethics Commission, Recommendations for Statutory Changes (Austin, Texas: Texas Ethics Commission Task Force, January 2007), 8-9
- ¹²³ Texas Ethics Commission, Ethics Advisory Opinion No. 45 (Austin, Texas: Texas Ethics Commission, September

1992) 1

¹²⁴ Texas Ethics Commission, Recommendations for Statutory Changes (Austin, Texas: Texas Ethics Commission Task Force, January 2007) Exhibit B

¹²⁵ Texas Senate State Affairs Committee, Bill Analysis of C.S.H.B. 2508 by King, Phil (Austin, Texas: Senate State Affairs Committee 2007)

¹²⁶ <http://www.sos.state.tx.us/elections/index.shtml>

¹²⁷ <http://www.ethics.state.tx.us/tec/commissioners.htm>

¹²⁸ <http://www.ethics.state.tx.us/tec/duties.htm>

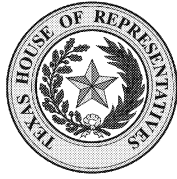
**HOUSE COMMITTEE ON ELECTIONS
SUB-COMMITTEE ON MAIL-IN BALLOT INTEGRITY
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2008
SUB-COMMITTEE REPORT: MAIL-IN BALLOT FRAUD
& INCIDENTS OF NON-CITIZEN VOTING**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
81ST LEGISLATURE
NOVEMBER, 2008**

**RAFAEL ANCHIA
SUB-COMMITTEE CHAIRMAN**

**LON BURNAM
KIRK ENGLAND
SUB-COMMITTEE MEMBERS**

TEXAS HOUSE OF REPRESENTATIVES



Sub-Committee on Mail-in Ballot Fraud and Non-Citizen Voting

November 19, 2008

The Honorable Leo Berman
Chairman, House Committee on Elections
P.O. Box 2910
Austin, TX 78768-2910

Re: Sub-Committee Interim Report

Dear Chairman Berman:

The Sub-Committee on Mail-in Ballot Fraud and Non-Citizen Voting hereby submits its interim report including recommendations for consideration by the Eighty-first Legislature.

Respectfully submitted,

Handwritten signature of Rafael Anchia in black ink.

Rafael Anchia
Chairman

Handwritten signature of Kirk England in black ink.

Kirk England

Handwritten signature of Lon Burnam in black ink.

Lon Burnam

INTRODUCTION

During the January 25, 2008 interim committee hearing of the House Elections Committee examining the prevalence of voter fraud in Texas Elections, Chairman Leo Berman appointed Rep. Rafael Anchia to chair a subcommittee comprised of Rep. Lon Burnam and Rep. Kirk England to study the issues of mail-in ballot fraud and incidences of non-citizen voting. Its charges are as follows:

- Examine the challenges of administering mail-in ballots and provide recommendations for reducing instances of mail-in ballot fraud.
- Examine cases of jury summons purging to determine if 1) citizens are being wrongly removed from the voter rolls and 2) non-citizens are voting in U.S. elections.

The subcommittee held two hearings on mail-in ballot fraud: one in Dallas, Texas on April 7, 2008 and a subsequent hearing in Brownsville, Texas on September 5, 2008. In order to examine incidences of non-citizen voting, the subcommittee staff interviewed several individuals in Harris County who were identified by the Harris County Tax Assessor Collector as non-citizens and consequently taken off the voter rolls. The Harris County interviews were intended as a sample universe to gauge the scope of the problem.

This report will provide an analysis of the benefits of open mail-in ballot policies while pointing out the problems posed by fraud and abuse. The subcommittee's recommendations aim to balance improving confidence and security in the vote by mail process without unduly compromising the right to vote in Texas. The report will also look at allegations of non-citizen voting in order to further discern the extent of the problem if any in Texas.

This report was written Damien Brockmann, Legislative Director for Rep. Rafael Anchia with the support of Joy Authur; Craig Adair, Legislative Director for Representative Lon Burnam; Liz Zornes, Chief of Staff for Representative Anchia; Patrick Dudley, clerk of the Elections Committee; Luis Figueroa, attorney for the Mexican American Legal Defense Fund; Shawn Leventhal, Legislative Director for Representative Scott Hochberg; and Buck Wood.

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Charge # 1

Examine the challenges of administering mail-in ballots and provide recommendations for reducing instances of mail-in ballot fraud.

Testimony

Sub-Committee Hearing: Dallas, TX April 7, 2008

Mary Ann Collins

Nanette Forbes, Texas Association of Counties

Steve Raborn, Tarrant County Elections

Yolanda Ramirez, Tarrant County Elections

Bruce Sherbet, Dallas County Elections

Sub-Committee Hearing: Brownsville, TX September 5, 2008

Rogelio Ortiz, Cameron County

Ana Bazan, Duval County

Roy Ruiz, Kenedy County

Leo Alarcon, Kleberg County

Oscar Villarreal, Webb County

Jaime Diez, Immigration Attorney

Celestino Gallegos, Immigration Attorney

Lisa Brodyaga, Immigration Attorney

Dustin Rynders, Advocacy, Inc.

Dagoberto Barrera

Background

During the 79th and 80th legislative sessions, the Texas Legislature considered bills that would have required voters to provide photo identification in order to vote in Texas. The rationale for that legislation was founded in the proposition that additional security provisions are needed in order to prevent individuals from perpetrating in-person voter fraud. However, testimony by the office of the Texas Attorney General suggests that most recent cases of voter fraud cited are in fact instances of mail-in ballot fraud¹-- a type of fraud that could not be addressed through enhanced security measures for in-person voting.² Of the twenty-six cases which are either under indictment or have been prosecuted by the Texas Attorney General's office since 2002,³ eighteen were instances of illegal mail-in ballot handling or mail-in ballot fraud.⁴ All of those eighteen cases involved cases of the defendant illegally possessing or carrying the ballot of another individual.⁵ A listing of the prosecutions is included in Appendix I of this report. Only

¹ Office of the Texas Attorney General. "Election Code Referrals to Office of the Attorney General - Prosecutions Resolved" and "Election Code Referrals to Office of the Attorney General - Indictments Pending Resolution," September 2008. (See Appendices I & II).

² Tova Wang. Testimony before the House Committee on Elections, January 25, 2008.

³ Statistics represent data collected from 2002 through September 2008.

⁴ Eric Nichols, Office of the Texas Attorney General. Testimony before the House Committee on Elections, January 25, 2008.

⁵ Eric Nichols.

one case, an instance of a daughter attempting to vote for her deceased mother,⁶ was an actual case of in-person voting fraud. This one case of voter impersonation in six years should be viewed in the context of over 29 million votes cast in state elections during that same time period.⁷ However, the Texas Attorney General's office cited numerous examples of mail-in voter fraud as a justification for Indiana's strict new voter photo identification requirement in its amicus brief to the U.S. Supreme Court for its ruling in *Crawford vs. Marion County Board of Elections*.⁸ In doing so, the Attorney General conflates the remedy for voter impersonation with that of the more prevalent, and yet rarely occurring form of voter fraud in Texas-- mail-in ballot fraud.

In 2003, the Texas Legislature passed HB 54 by then-State Representative Steve Wolens of Dallas who sought to address the problem of over-zealous campaign workers "harvesting" votes from retirement communities and long-term care facilities.⁹ However, following the passage of that legislation, there has been confusion over the new law among many workers who assist the elderly and disabled.¹⁰ Additionally, under the new law, the Attorney General aggressively sought prosecutions of assistants for home-bound voters who were primarily minorities.¹¹ Claiming that those prosecutions were politically motivated, the Texas Democratic Party consequently sued the Attorney General's Office, resulting in a federal judge ordering the Attorney General to halt those prosecutions until the suit could be heard.¹² While the lawsuit was pending, the Attorney General rewrote its prosecution guidelines related to mail-in ballot fraud. Ultimately, the lawsuit was primarily settled out of court.¹³

The experience of HB 54 and its implementation and enforcement demonstrate the need to balance the aims of ensuring the integrity of our elections while simultaneously protecting access to voting. Overemphasizing one could well undermine the policy aims of the other. While HB 54 addressed the issue of protecting homebound individuals from vote tampering by those individuals who assist them, it did not address other types of mail-in ballot fraud which still occur.

Mail-in ballots expand the franchise.

Chapter 82 of the Texas Election Code allows qualified voters to vote by mail because of absence from their county of residence, disability, age, or confinement in jail.¹⁴ Military

⁶ Eric Nichols.

⁷ Texas Secretary of State: <http://elections.sos.state.tx.us/elchist.exe>

⁸ Greg Abbott, Texas Attorney General. *Brief Of Texas, Alabama, Colorado , Florida , Hawaii, Michigan, Nebraska, Puerto Rico, And South Dakota As Amici Curiae Supporting Respondents to Crawford v. Marion County Board of Elections, the United States Supreme Court.*

⁹ House Research Organization. "Analysis of HB 54," April 4, 2003.

¹⁰ Carolyn Mounce, Certified Volunteer Ombudsman, University of Texas Center on Aging. Written Testimony, September 5, 2008.

¹¹ Terrence Stutz. "Prosecution of voter helpers halted," Dallas Morning News. November 2, 2006.

¹² Polly Ross Hughes. "Judge blocks Texas ban on mailing others' ballots," *San Antonio Express News*, November 2, 2006.

¹³ Wayne Slater. "Democrats, AG settle voter-fraud lawsuit," *Dallas Morning News*, May 29, 2008.

¹⁴ Texas Elections Code § 82.002(a).

personnel and residents travelling outside of their county on Election Day are afforded the right to vote through a mail-in ballot if the person applies for a mail-in ballot seven days before an election and their mail-in ballot is received by the voting clerk by the time polls close on Election Day.¹⁵ If the ballot is mailed from overseas, it must be received by the voting clerk no later than five days after Election Day.¹⁶ In order to qualify to vote by mail from outside of the county, the ballot must be mailed to an address outside of the county of residence.¹⁷ Unlike in-person voting, voting by mail does not require a person to verify their identity through the use of a voter registration card or photo identification card. The use of a mailing address is considered sufficient to ensure that a ballot is delivered to the intended recipient.

Assistance for Military Personnel

During the 80th session, the Texas Legislature passed SB 90 by Senator Van de Putte. The bill created a pilot program which allows participating counties to deliver mail-in ballot materials to military personnel overseas using their military email addresses.¹⁸ Seventeen counties are participating in that pilot during the 2008 election cycle.¹⁹ While the program allows military personnel to receive their ballots expeditiously via email, those voters must use the postal system in order to deliver their ballots to their respective county election officials. During the pilot program, the feasibility of expanding the program to all overseas voters will also be studied.²⁰

Currently, military personnel, along with members of the merchant marine and any other Texas residents temporarily living abroad, may use the Federal Postcard Application (FPCA) in order to register and apply to vote by mail from abroad.²¹ The FPCA serves as a generic voter application readily available to American citizens through U.S. embassies and consular offices abroad. The FPCA differs from the standard mail-in ballot application, however, in that it does not require the applicants to be registered voters.²² Applicants for standard mail-in ballots must already be registered to vote.²³ Problems arise when service personnel return to their home counties to find that applying to vote by mail through the FPCA does not automatically register them to vote in person in their respective counties.²⁴ Automatically registering individuals both through the FPCA and through the standard mail-in ballot application would simplify the voting process for both standard mail-in ballot voters and voters returning home from abroad who have already used the FPCA process.

¹⁵ Texas Elections Code § 82.007(a).

¹⁶ Texas Elections Code § 82.002(d).

¹⁷ Texas Elections Code § 82.003(c)(1).

¹⁸ Kelly Shannon. "Texas military members test out e-mail ballots," *Houston Chronicle*, September 18, 2008.

¹⁹ Texas Secretary of State's Office.

²⁰ House Research Organization. "Analysis of S.B. 90," March 27, 2007.

²¹ Texas Elections Code § 101.001.

²² *Ibid.*

²³ Texas Elections Code § 86.001(e).

²⁴ Bruce Sherbet, Dallas County Elections Clerk. Testimony before the mail-in ballot subcommittee, April 5, 2008.

The Elderly and Homebound

People over the age of 65 and people with disabilities are also provided the right to vote by mail under Texas law. Despite provisions in the Help America Vote Act (HAVA) to make voting more accessible to people with disabilities, mail-in voting is still necessary for those who are confined at home, to a nursing home, or in another institution because of disability-related needs or sickness or who are unable to drive or find accessible transportation.²⁵ In addition, many individuals with disabilities are forced to vote by mail while temporarily receiving services from an institution or service provider in a county away from their permanent residence.²⁶

The convenience of mail-in balloting does not address all of the barriers that exist for some individuals who wish to vote. Homebound voters still require varying levels of support and accommodation with their mail-in ballots.²⁷ Some individuals need support completing a form in a legible manner, but can provide a signature. Other individuals may need support in completing a form and signing a form.²⁸ Each type of assistance poses its own challenge in maintaining the integrity of the person's vote. Texas law does not specifically provide support for homebound or institutionalized voters, and may subject counties to lawsuits under the American Disabilities Act.²⁹ This leaves many homebound individuals to depend on the assistance of family members or neighbors, while others are dependent on the aid of nurses, social workers, and advocacy groups to fill out and mail their ballots.³⁰

Also problematic, homebound voters must re-apply to vote by mail each election cycle, even if they have not changed their address.³¹ The application forms for mail-in ballots differ depending on the third party which distributes them. This provides an additional complication for a voter to navigate through, and breeds a voting system which is redundant and inconsistent.³²

Twenty-three states have laws affording voting assistance to persons in nursing homes and “other similar health care facilities for older persons and persons with disabilities,” including assisted living facilities, senior citizen housing, mental health facilities, U.S. Veteran’s Administration facilities and hospitals. Most of these states also include voter

²⁵ Dustin Rynders, Advocacy, Inc. Testimony before the mail-in ballot subcommittee, September 25, 2008.

²⁶ Ibid.

²⁷ Written testimony provided by Dustin Rynders, Advocacy, Inc.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Steve Raborn, Tarrant County Elections. Testimony before the mail-in ballot subcommittee, April 5, 2008.

³² Ibid.

assistance provisions triggered by a voter's absentee ballot request, status or a threshold number of absentee ballot applications.³³

The Effects of HB 54

The passage of HB 54 in 2003 had a significant impact on the manner in which Texas administers mail-in voting, specifically as it relates to assisting the homebound community with their vote. HB 54 created a new mail-in ballot regime that: (1) delineated procedural standards for assisting individuals with their mail-in ballots; (2) provided a mechanism for tracking individuals who provide mail-in ballot assistance; and (3) provided an enforcement mechanism that allows District Attorneys and the Attorney General to enforce the law and protect citizens from predatory behavior.³⁴

HB 54 requires a person who transports a ballot to be mailed or a person who assisted a voter in preparing a ballot to put the person's signature, printed name, and residence address on the official carrier envelope of the voter's ballot.³⁵ The legislation also prohibits delivery by a carrier of an envelope that originates from an office of a political party or candidate.³⁶ Finally, the legislation made it a Class A misdemeanor for a person who witnesses or assists with the marking of a ballot who knowingly fails to comply with the law governing those actions. The legislation also provided penalties for knowingly marking or attempting to mark another person's ballot without that person's consent and for unlawfully assisting a voter by preparing a voter's ballot without that person's consent.³⁷

Confusion between mail-in ballot witnesses and assistants

Prior to the passage of HB 54, state law provided that an individual could only assist one voter with a disability by witnessing his or her signature on an application for a mail-in ballot.³⁸ The additional penalties provided in HB 54 has left many people concerned about abiding by the lawful procedures for mail-in balloting, particularly regarding who can and cannot assist individuals with voting.³⁹ This has limited many voters with disabilities from selecting a trusted person to assist them.⁴⁰ While the law specifies that only one person can witness a signature on a mail-in ballot application, it does not limit the number of voters one person can assist with a mail-in ballot. Regardless, many individuals incorrectly believe that the law prohibits an individual from assisting more

³³ Amy Smith and Charles P. Sabatino, *Voting by Residents of Nursing Homes and Assisted Living Facilities*, 26 BIFOCAL (Bar Associations in Focus on Aging and the Law, publication of the American Bar Association Commission on Law and Aging) No. 1, 1-2, 8.

³⁴ Bruce Sherbet, Dallas County Elections Clerk. Testimony before the mail-in ballot subcommittee, April 5, 2008.

³⁵ House Research Organization. "Analysis of HB 54," April 4, 2003.

³⁶ Ibid.

³⁷ Ibid

³⁸ Anne McGeehan, Director of Elections Division, Texas Secretary of State.

³⁹ Dustin Rynders, Advocacy, Inc. Testimony before the mail-in ballot subcommittee, September 25, 2008.

⁴⁰ Ibid.

than one voter.⁴¹ One source of this confusion is the fact that the signature line provided on the ballot envelope serves to identify both ballot assistants and signature witnesses, to whom very different rules apply.⁴² This has led several advocates and care providers to avoid assistance with mail-in voters altogether.⁴³

Political influences on the mail-in ballot process

The fact that several different applications are available for a person to apply for a mail-in ballot further confuses individuals regarding the handling of mail-in ballots.⁴⁴ Many candidates and political parties provide their own applications for a mail in ballot, resulting in inconsistencies in the mail-in ballot applications provided to voters. These differences lead to errors in how they are filled out.⁴⁵

Problems with the handling of mail-in ballots in Dallas County prior to 2003 led to the passage of HB 54.⁴⁶ Prior to its passage, Dallas county elections officials reported receiving approximately two dozen complaints of mail-in ballot assistance abuse out of the 15,000 to 50,000 mail-in ballots they received each election year. Since 2003, reports of mail-in ballot assistance abuse in Dallas County are extremely rare.⁴⁷

However, officials in South Texas are still concerned about the impact of *politiqueras* on voters who require assistance.⁴⁸ Of the eighteen cases of illegal mail-in ballot handling or mail-in ballot fraud which are either under indictment or have been prosecuted by the Texas Attorney General's office since 2002, twelve occurred in counties in South Texas.⁴⁹ *Politiqueras* are individuals hired by political campaigns to promote a candidate and deliver votes from nursing homes and assisted living centers, and other residential facilities. HB 54 has had an impact on this type of activity, however. For example, in 2006, Kleberg County successfully prosecuted a *politiquera* who witnessed signatures for 12 mail-in ballots.⁵⁰

Despite the concerns of political operatives placing undue political pressure on those that require assistance to vote, simply requiring assistance is not evidence that a person lacks sufficient capacity to participate in the electoral process. The only potentially legal way to restrict voting eligibility is when a court with probate jurisdiction, in a guardianship proceeding, finds that a person is “totally mentally incapacitated” or “partially mentally incapacitated without the right to vote.”⁵¹ Any protections offered to the homebound

⁴¹ Ibid.

⁴² Steve Raborn, Tarrant County Elections.

⁴³ Dustin Rynders, Advocacy, Inc.

⁴⁴ Steve Raborn, Tarrant County Elections.

⁴⁵ Ibid.

⁴⁶ Bruce Sherbet, Dallas County Elections Clerk.

⁴⁷ Ibid.

⁴⁸ Ana Bazan, Duval County Elections Clerk. Testimony before the mail-in ballot subcommittee, September 5, 2008.

⁴⁹ Eric Nichols, Office of the Texas Attorney General.

⁵⁰ Leo Alarcon, Kleberg County Elections Clerk. Testimony before the mail-in ballot subcommittee, September 5, 2008.

⁵¹ Texas Elections Code § 11.002.

community in the form of restrictions on mail-in ballot assistance should not go so far as to prohibit a mail-in ballot voter from receiving the assistance he or she requires to exercise her right to vote.

Political Ramifications

While HB 54 has been lauded for providing new enforcement mechanisms to prosecute predatory vote harvesting, its implementation has raised questions over whether the power it provides to elected officials can be abused for political gain. The Texas Democratic Party (TDP) sued Greg Abbot in 2006, accusing him of targeting only minority communities -- strongholds of Democratic voters -- in his efforts to crack down on mail-in vote abuse. Those efforts led to 10 prosecutions statewide against people who were accused of illegally handling ballot applications and mail in ballots that belonged to other voters.⁵² None of the convictions were of Republicans.⁵³ The case was primarily settled out of court in May, 2008.⁵⁴

Prior to that settlement, the Texas Attorney General agreed to rewrite prosecution guidelines to reflect that voters who merely possess the ballot of another voter with that voter's consent will not be investigated or prosecuted unless there's evidence of actual fraud. The Attorney General and Secretary of State agreed in the settlement to consider additional revisions to voter instruction language that make it clear to voters, and those who assist them, the proper procedures for voting by mail. The plaintiffs agreed to drop all pending claims except for the challenge to the State's restriction on a person's acting as a witness on only one mail ballot application.⁵⁵ A federal court later dismissed that claim.⁵⁶

Mail-in voter fraud occurs outside of the context of providing assistance to homebound voters.

The focus of recent legislation to reduce the incidence of mail-in voter fraud has specifically targeted mail-in ballots from the elderly and disabled communities. However, most cases of mail-in voter fraud are not a product of abuse of homebound voters.⁵⁷ For example, in Starr County, four people were indicted for registering voters without their knowledge, and using the vote-by-mail system to illegally vote during the 2006 primary election.⁵⁸ Provisions of HB 54 did not address the most insidious forms of

⁵² Aman Betheja. "Democrats, AG both declare victory in voter fraud lawsuit." *Fort Worth Star Telegram*, May 29, 2008.

⁵³ Steven Rosenfield. "Texas Prosecutes Little Old Ladies for Voter Fraud," *AlterNet*, March 31, 2008. Available at <http://www.alternet.org/story/80589/>.

⁵⁴ Wayne Slater. "Democrats, AG settle voter-fraud lawsuit," *Dallas Morning News*, May 29, 2008.

⁵⁵ Lee Nichols. "AG and Dems Settle... Then Fuss," *Austin Chronicle*, June 5, 2008.

⁵⁶ Anne McGeehan.

⁵⁷ Office of the Texas Attorney General. "Election Code Referrals to Office of the Attorney General - Prosecutions Resolved" and "Election Code Referrals to Office of the Attorney General - Indictments Pending Resolution," September 2008. (See Appendix I & II).

⁵⁸ The Office of the Texas Attorney General. "Five Rio Grande Residents Indicted for Voter Fraud," June 1, 2007.

mail-in voter fraud: the use of the mail-in ballot system to perpetrate voter impersonation. The bills filed in 2005 and 2007 that aim to deter in-person voter impersonation also offered nothing to address this type of voter fraud.⁵⁹

According to the Attorney General's statistics for prosecuted cases, mail-in voter fraud is mostly confined to small and medium-sized counties.⁶⁰ Of the eleven counties where mail-in voter fraud has occurred in the state since 2002 or where indictments are pending, the largest county, Nueces County, has a population of 321,445 and the county with the median population, Panola County, has a population of 22,989.⁶¹ The cases of mail-in voter fraud occur in areas where it can affect an election when the outcome is very close, and one malicious individual may be able to affect an election by inserting a handful of fraudulent votes. However, the mail-in ballot system offers its own failsafe tool for the identification and prosecution of perpetrators of such fraud. Suspicious mail-in votes can be targeted using signature verification, and fraudulent mail-in votes can be easily tracked to an address where a person resides, facilitating prosecution of those cases.⁶²

Non-residents voting by mail-in ballot

One case of alleged mail-in ballot fraud which has attracted scrutiny this decade involves the Escapees RV Club in Polk County, Texas.⁶³ Even though the Escapees Club has space for less than 200 RV's in their motor home park, over 65,000 members from around the country claim the property as their Texas residence,⁶⁴ including 12,000 registered voters.⁶⁵ The Escapees Club urges its members to register to vote in Texas in order to substantiate their claim to Texas residency,⁶⁶ and offers the option of forwarding their mail-in ballots wherever they are in the country. Of the 65,000 subscribers, few have lived in Polk County and many have never even driven through the county.⁶⁷ The Escapees Club allows members to request that their mail-in ballots be mailed to a post office box in Shepherd, Texas, leased by the Escapees Club in an adjacent county. An employee of the Escapees Club picks up the mail from the post office box and forwards the ballots to as many as 10,000 members who use this system to vote in Polk County.⁶⁸

⁵⁹ House Research Organization. "Analysis of HB 218," April 23, 2007; and "Analysis of HB 1706," May 2, 2005;

⁶⁰ See Appendix I.

⁶¹ 2006 American Community Survey, U.S. Census Bureau.

⁶² Buck Wood, plaintiff's attorney in *The Honorable B.E. "Slim" Speights, v. Bob Willis*. Written testimony provided to the subcommittee.

⁶³ Forest Wilder. "The Winnebago Vote - How 12,000 RVers tilt East Texas Elections," *The Texas Observer*. October 3, 2008.

⁶⁴ Angela Carr, an employee of the Escapees RV Club, Oral Deposition in *Willie Ray vs. State of Texas* April 17, 2008.

⁶⁵ Forest Wilder.

⁶⁶ The Escapees Club helps its members set up residency in Texas so that they may evade paying income in their home states.

⁶⁷ See Appendix III, the sworn testimony of an *Escapee* in *The Honorable B.E. "Slim" Speights, v. Bob Willis*, an individual who registered to vote and voted in Polk county, but who has never been there.

⁶⁸ Angela Carr, an employee of the Escapees RV Club.

While Texas law prohibits a person from registering at a post office box,⁶⁹ the Escapees Club seeks to skirt the law by assigning fictitious addresses to its members, alternating between even and odd address numbers in order to ensure compliance with the Texas law that prohibiting voting precinct from having more than 5,000 voters.⁷⁰ Texas law also prohibits an individual from setting up a post office box in a county, other than their county of residence, for the purpose of circumventing the requirement that only persons age 65 or older can be sent absentee ballots to an in-county address.⁷¹ Polk County, however, sends thousands of Escapees' mail-in ballots to a post office box in Shepherd, Texas every election cycle.⁷²

Unlike the handful of cases of mail-in ballot fraud investigated and prosecuted by the Texas Attorney General, the Escapees case has the potential to influence state and local elections by thousands of votes every election cycle. Current law is sufficient to prosecute any incidents of voter fraud found there, and state and local law enforcement need to further investigate these incidents in order to maintain confidence in the Texas electoral system.

Vote by Mail Electoral Systems

Some states and municipalities use only Vote by Mail (VBM) electoral systems rather than the traditional hybrid system of using both polling places and mail-in ballots for select groups of voters. Oregon conducts all of its elections with VBM, while Washington allows counties to decide whether to use VBM or a hybrid system.⁷³ Colorado also allows local governments to use VBM elections for local elections held in odd numbered years. Reportedly, VBM systems have a number of benefits, including increased voter turnout, increased voting security, easier election administration, and improved quality of voter information.⁷⁴

VBM elections are easier to administer than hybrid elections and consequently provide more secure elections. After a close Governor's race in Washington in 2004, several investigations and oversight committees revealed that administering elections both at the polls and by mail simultaneously led to inefficiencies in the voting system and a high risk of error.⁷⁵ VBM has provided election administrator with greater control and accuracy over elections. VBM systems require local elections administrators to send out three to four mailings a year. If a voter has moved, the administrator is notified by the U.S. Postal Service and the county can more easily update its voter registration database over several periods during the course of the year.⁷⁶

⁶⁹ Texas Election Code, §1.015.

⁷⁰ Buck Wood, plaintiff's attorney in *The Honorable B.E. "Slim" Speights, v. Bob Willis*.

⁷¹ Texas Election Code, §1.018; Texas Penal Code, §15.02.

⁷² Angela Carr, an employee of the Escapees RV Club.

⁷³ Currently 38 of Washington's 39 counties have decided to switch to the VBM system.

⁷⁴ Common Cause. "Getting it Straight for 2008 - What we know about vote by mail elections and how to conduct them well," January 2008. Available at: <http://www.commoncause.org>

⁷⁵ Washington Secretary of State. "Washington State's Vote-by-Mail Experience, 2007 " Available at: <http://secstate.wa.gov/documentvault/WashingtonStatesVotebyMailExperienceOctober2007-2066.pdf>.

⁷⁶ Ibid.

Both Washington and Oregon have seen very little voter fraud after switching to VBM elections. Election workers are required to take a signature identification course. During the vote count, they are required to compare the signature on every ballot that is mailed in with the signature scanned from the voter's registration card.⁷⁷ This process is facilitated by access to statewide database, ensuring that only one person receives one vote.⁷⁸ Early opponents of VBM expressed concern about opening the electoral process up to additional fraud and voter intimidation. In order to address the possibility of wrongdoing, VBM voters are provided the option of dropping their ballots off at election centers, and a hotline phone number for reporting intimidation and vote suppression is widely publicized.⁷⁹ Neither Oregon nor Washington has seen evidence of voter fraud after fully implementing VBM.

Increased turnout is cited as one of the largest reasons to consider VBM voting. Voters in VBM systems generally have a couple of weeks to fill-out and return their ballots from their homes. Concerns about inclement weather, long lines at polling places and confusion over where to vote no longer serve as impediments to voting in VBM systems.⁸⁰ According to a report prepared for the Commission on Federal Election Reform on Oregon's VBM system, voting by mail in that state has increased turnout in that state by as much as 10%.⁸¹ Likewise, as VBM increased in popularity among Washington counties, that state witnessed an increase of 10 percentage points in comparable years.⁸² From a local perspective, Contra Costa County in California held a school parcel election using VBM in 2004. The resulting turnout, 52.9 percent, more than doubled the previous turnout for a school parcel election in 2002, and even surpassed the school parcel election which corresponded with a presidential primary in March 2004.⁸³

However, implementing a VBM system alone does not guarantee improved voter turnout. A VBM election must be accompanied by several weeks of publicity via mailings, newspaper ads and public service announcements to educate the public about the electoral process.⁸⁴

One final benefit of VBM that both Oregon and Washington tout in their electoral systems is promotion of an informed citizenry.⁸⁵ VBM allows citizens to take time to deliberate over their ballots and consider the issues. Campaigns' get-out-the-vote efforts are extended over a period of several weeks rather than a couple of days in traditional elections. VBM also reduces the impact of last minute negative campaigning or

⁷⁷ Dr. Paul Gronke Director, The Early Voting Information Center at Reed College, Portland, Oregon. "Ballot Integrity and Voting By Mail: The Oregon Experience," a Report for the Commission on Federal Election Reform June 15, 2005.

⁷⁸ Common Cause.

⁷⁹ Washington Secretary of State.

⁸⁰ Ibid.

⁸¹ Dr. Paul Gronke Director, The Early Voting Information Center at Reed College, Portland, Oregon.

⁸² Washington Secretary of State.

⁸³ Common Cause.

⁸⁴ Ibid.

⁸⁵ Ibid.

misinformation, since many ballots are already in the mail by the time they can have an effect.⁸⁶

During the 2007 legislative session, Rep. Bonnen filed HB 1146 to create a VBM pilot program for municipalities with populations of less than 250 people.⁸⁷ The bill passed on third reading in both the House and Senate, but the session ended before the conference committee report could be approved by both houses of the legislature. Previously, in 1996, the Texas Comptroller recommended that Texas conduct a VBM pilot, citing its ability to reduce election costs.⁸⁸ Following that recommendation in 1999, Rep. Hochberg filed HB 1825 to allow school districts to conduct elections by mail.⁸⁹ The bill passed in the House, but failed to move in the Senate. Unfortunately, the measure was not reconsidered in any subsequent legislative sessions.

A pilot VBM program would give the state the opportunity to measure the efficiency and effectiveness of conducting elections by mail only and contrast it with the experience of conducting a traditional hybrid election.

⁸⁶ Common Cause.

⁸⁷ House Research Organization. "Analysis of HB 1146," May 1, 2007.

⁸⁸ Texas Comptroller's Office. "Disturbing the Peace: The Challenge of Change in Texas Government - A Report from the Texas Performance Review," December 1996. *available at* <http://www.window.state.tx.us/tpr/tpr4/tpr4.html>.

⁸⁹ Texas Legislative Information System.

Available at: <http://tlis/BillLookup/Actions.aspx?LegSess=76R&Bill=HB1825>

Findings and Recommendations

- 1) After the passage of HB 54, some counties in south Texas are still concerned about the impact that politically motivated voting assistants may have on the mail-in ballot process. Additional voter educational outreach is also necessary to help mail-in ballot voters and individuals that provide assistance to mail-in voters understand the law. A deputy mail-in voter assistant program may help educate assistants and provide elections officials with a tool to track third party individuals who are involved in the electoral process. This type of program must be designed to allow easy registration of voting assistants, so as to not create an additional impediment to mail-in voting and maintain compliance with federal law.
- 2) The most significant type of mail-in voter fraud is likely occurring among voters who abuse the system to vote in elections in which they are not residents. State law already prohibits this activity. It is important that state law enforcement quickly address the issue to maintain confidence in the election system.
- 3) Currently, perennial mail-in ballot voters must re-apply before each election cycle, even if they have not changed their address. In an effort to reduce bureaucratic steps to voting and improve efficiency, voters over 65 and voters with disabilities should have the ability to submit a permanent application for a mail-in ballot for life, so they are not burdened with filling out application forms ahead of each election cycle.
- 4) The forms used for mail-in ballots and mail-in ballot applications are confusing. One standard form should be used for all mail-in ballot applications, and balloting materials should be redesigned to reduce voter confusion. Separate fields should be provided on the mail-in ballot envelope for witnesses and assistants so that the two roles are not confused.
- 5) Some overseas voters who use the Federal Post Card Application to register to vote, including military personnel, mistakenly believe that doing so also registers them to vote in person. It is important that we make every effort to reduce voter confusion. Voters who use the FPCA form to register to vote abroad should also be registered to vote in person at their home precinct.
- 6) Vote By Mail election systems offer additional security and efficiency over hybrid elections systems to election administrators. A VBM pilot program should be initiated in order to study its effectiveness in Texas elections.

Charge # 2
Examine incidents of non-citizen voting.

Background

Advocates for a photo voter identification requirement and the requirement to verify a person's citizenship in order to register to vote have alleged that thousands of non-citizens may be voting in Texas elections.⁹⁰ These statistics are the product of cross-referencing lists of individuals who indicate that they are not citizens on a jury summons form with lists of registered voters. These two conflicting statements-- one on a jury summons form and one on a voter registration form-- are not positive evidence of either claim. However, if a person represents himself as a non-citizen on a jury summons who is also listed on the voter rolls, state law requires the local elections office to send a letter to the registered voter, requesting clarification of their official status.⁹¹ If the letter is not returned within 30 days with proof of the voter's citizenship, that voter is removed from the county's voter rolls and is considered to be a non-citizen voter.⁹²

These allegations raise questions about the possibility of non-citizens on the voting rolls, and stand in stark contrast to several government and academic studies which indicate that there is no evidence of non-citizen voting.⁹³ There are already several legal deterrents built into the voter registration system which prevent non-citizens from attempting to vote in U.S. elections.⁹⁴ If a non-citizen registers to vote willfully claiming that he or she is a citizen, that person commits perjury, a felony under federal law punishable by up to three years in prison.⁹⁵ Making a false statement on a voter registration card is also a Class A misdemeanor under Texas law punishable by up to a year in prison and a \$4000 fine.⁹⁶ Voting as a non-citizen itself carries an additional penalty under federal law of up to a year imprisonment.⁹⁷ Additionally, non-citizens who falsely identify themselves as citizens render themselves ineligible for future consideration to become U.S. citizens and may be deported.⁹⁸

Statistics indicating non-citizens are on the jury rolls and voter rolls have tremendous political significance. For example, the Heritage Foundation, which advocates for additional voter restrictions, cited statistics of non-citizens in jury pools as evidence that non-citizens are registering to vote.⁹⁹ Those statistics are based on a 2005 U.S.

⁹⁰ Ed Johnson, employee of the Harris County Tax Assessor Collector's Office. Testimony before the Texas House Committee on Elections, on HB 218 and HB 626. February 28, 2007.

⁹¹ Texas Elections Code, § 16.0332(a).

⁹² Texas Elections Code, § 16.0332(b).

⁹³ Dr. Toby Moore, RTI International. Testimony before the Texas House Committee on Elections, January 25, 2008.

⁹⁴ Luis Figueroa, attorney, Mexican American Legal Defense Fund. Testimony before the Texas House Committee on Elections, January 25, 2008.

⁹⁵ 42 U.S.C. Section 1973 gg-10.

⁹⁶ Texas Penal Code § 37.02.

⁹⁷ 18 USC sec. 611.

⁹⁸ 8 USC sec 1182(a)(6)(C)(ii).

⁹⁹ Hans A. von Spakovsky. "The Threat of Non-Citizen Voting, Legal Memorandum No. 28", *The Heritage Foundation*, July 10, 2008. Available at <http://www.heritage.org/Research/LegalIssues/lm28.cfm>.

Government Accountability Office (GAO) report listing data from 14 U.S. district courts.¹⁰⁰ The Heritage Foundation cited the report, mentioning that 3% of jury applicants in one district listed themselves as non-citizens. The organization used that data point to posit that 3% of all jury pools, and possibly all voter rolls nationwide, may contain non-citizens. The Heritage Foundation failed, however, to mention that ten of the fourteen districts had no evidence of non-citizens in their jury pools, and the three of the remaining four reported that potential jurors who reported themselves to be non-citizens only comprised approximately 1%, 0.158%, and 0.01% of their jury pools respectively.¹⁰¹ The Heritage Foundation also failed to correlate the above data with actual non-citizens on the voter rolls.

Given the political implications that allegations of non-citizen voter registrations have on the public's trust of the integrity in the electoral system, it is important to examine each of the possibilities that those allegations may indicate. Evidence that some non-citizens are on the voter rolls does not necessarily indicate that non-citizens are purposefully registering to vote and voting. Given the lack of prosecutions of non-citizen voting at both the state and federal levels, this is the least likely scenario.¹⁰² Other scenarios that may explain the statistics of alleged non-citizens in jury pools and voter rolls include: 1) American citizens are improperly identified as non-citizens through the jury summons cross-reference process; 2) non-citizens are accidentally registering and some are voting not knowing the legal repercussions for their actions; or 3) local county elections officials are improperly registering people to vote who properly identify themselves as non-citizens.

Cases of Non-Citizen Voting and Non-Citizen Voter Registration

A handful of cases of non-citizen voting and non-citizen voter registration have surfaced in recent years in Texas. However, their numbers do not reflect a trend of tremendous numbers of non-citizens abusing the electoral system. The Texas Attorney General has only prosecuted one case in the last six years related to non-citizen voting¹⁰³ (see the Calhoun case below.) Evidence from incidences of non-citizen voter registration suggests that often the root cause of their transgressions is either ignorance of the law or a bureaucratic error.

Paul Bettencourt, the Tax Assessor-Collector for Harris County, provided Representative Anchia's office with several examples of letters written to his office by non-citizens, requesting that they accidentally registered to vote, and wanted to be removed from the voting rolls. One individual wrote (sic.):

¹⁰⁰ Government Accountability Office. "Report to Congressional Requesters: Additional Data Could Help State and Local Elections Officials Maintain Voter Registration Lists," GAO-05-478, June 2005.

¹⁰¹ Mexican American Legal Defense Fund. "The Myth of Widespread Non-citizen Voting", August 20, 2008. Available at http://www.truthinimmigration.org/Files/PDF/Rebuttal_to_Heritage_Foundation.pdf.

¹⁰² Eric Lipton and Ian Urbina. "In 5-year Effort, Scant Evidence of Voter Fraud." *New York Times*, April 12, 2007.

¹⁰³ Eric Nichols, Office of the Texas Attorney General.

*I am writing to you to let you know that I register to vote in 1996 and that at the time I was not aware of the rules. I was told to register and they told me it was ok to register even if I was not a US Citizen. At that time I was not familiar with the laws of the U. S. but know that I have been going to school I have knowledge know that it was wrong to register and I would like for my name to be taken off the list because I am not a U.S. Citizen.*¹⁰⁴

Another individual wrote Bettencourt's office (sic.):

*I am writing to withdraw voter's registration form that I had mailed to you some time ago. At that time I did not understand that I was not eligible to vote since I am a permanent resident of the United States and not a U.S. citizen.*¹⁰⁵

Sometimes ignorance of the electoral system facilitates the perpetration of voter fraud. In a recent example of purported non-citizen voting, a candidate in a Calhoun County primary election was accused of registering seven non-citizens to vote.¹⁰⁶ The defendant lied to the non-citizens about their ability to vote in a Texas election by telling them that they could vote despite not being citizens, as long as they had a valid driver's license. Of the seven non-citizen registrants, two actually voted in person in the election.¹⁰⁷ They were not criminally prosecuted because the evidence revealed that the non-citizen voters were misled by the defendant and did not meet the *mens rea* requirement for prosecution.¹⁰⁸

Another cause of non-citizen registrations is bureaucratic negligence. The Talmadge Heflin- Hubert Vo race for state representative for House District 149 in November 2006 was a source of suspicion of widespread voter fraud and non-citizen voting. After Vo narrowly defeated the incumbent, Heflin, by 52 votes, a recount was demanded and then challenged by the losing candidate's campaign, citing 260 purported instances of improperly cast votes.¹⁰⁹ After a review was conducted of the challenged votes, only one vote was found to be cast by a non-citizen. That person was a Norwegian man, a legal immigrant, who cast his vote for Heflin.¹¹⁰ On his voter registration application, he marked that he was not a citizen, but was still provided a voter registration card by the Harris County Tax Assessor Collector's office and allowed to vote.¹¹¹

This is not a unique occurrence. Of the 315 voter files provided to Representative Anchia's Office by the Harris County Tax Assessor Collector's office for voters who were taken off the rolls due to citizenship, 34 indicated on their original voter registration

¹⁰⁴ See Appendix IV

¹⁰⁵ See Appendix V

¹⁰⁶ Eric Nichols, Office of the Texas Attorney General.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Kristen Mack. "Vo victory grows by one vote." *Houston Chronicle*, December 2, 2004.

¹¹⁰ Joe Stinebacker and Kristen Mack. "Voters subpoenaed in Vo-Heflin Flap." *Houston Chronicle*, January 11, 2005.

¹¹¹ Ibid.

applications that they were not citizens and should not have been registered in the first place. Only one of those individuals voted (see below.) Additionally, 167 of the 315 purported non-citizen registrants were seemingly registered through a Department of Public Safety driver's license office.¹¹² None of the 167 DPS registrants voted illegally, however. It is difficult to determine whether the driver's license applicants did not feel free to explain their citizenship status to a public safety officer; or whether the applicants did not fully understand the form when they signed it. However, five of the DPS applicants checked "no" to the citizenship question and were registered anyway. Several DPS applicants checked "yes" on the DPS form, but later clarified that they were not citizens. One individual sent the Voter Registration Address Confirmation card back to the voter registrar, stating, "I am not a U.S. citizen. It was filled in incorrectly by the lady at the DPS."

Starting October 1, 2008, DPS will be checking the citizenship status of all drivers' license applicants, which will be indicated on the license itself.¹¹³ This may tremendously reduce the number of incidental non-citizen registrants through the motor-voter program, but will also likely have negative affect on some citizen applicants who may have difficulty providing adequate proof of citizenship, including people born to midwives, Americans born overseas, and people who have lost their documents in a disaster.

The voter registration application may have caused confusion

The voter registration application has had many different forms over the years. Earlier forms did not require the voter to check a box to indicate their citizenship status. Some forms placed the check box in a more prominent place in the application than other versions. Some forms contained Spanish translations. Most, however did not. Of the 315 voter files provided by Harris County, six individuals initially indicated that they were U.S. citizens on forms where the citizenship question was buried at the bottom of the form, and later responded "no" to the citizenship question when presented with a form with the question clearly presented in the top right hand corner.¹¹⁴

Non-Citizen Voter Inquiries

In response to claims of rampant non-citizen voter registration and voting, the subcommittee conducted follow-up inquiries with alleged non-citizen voters in order to obtain a better understanding of the citizenship status of these alleged non-citizens and how they became a part of the statistics that are routinely cited as evidence of widespread voter fraud. The subcommittee 's inquiry began with a written request to Harris, Dallas, Tarrant and Lubbock counties to provide the number of individuals they have taken off of the voter rolls due to conflicting citizenship information provided in their jury summons since 2004. The subcommittee's public information request was also made to El Paso,

¹¹² Forty-six applications were clearly stamped by a DPS official. The remaining 121 were filled out by printer in the same type face as other DPS applications.

¹¹³ Clay Robison. "DPS cracks down on illegal immigrants," *Houston Chronicle*, October 8, 2008.

¹¹⁴ See Appendix VI for an example of two registration forms where the same voter provided contradictory information for the citizenship question.

Travis and Bexar counties. Unfortunately, El Paso and Travis counties did not have any statistics to provide to the subcommittee, and Bexar County refused to provide the requested information while they compiled their own report on non-citizen voter registrations in their county.¹¹⁵ That report has yet to be publicly released.

Of the four counties that provided data, Dallas County reportedly removed 762 registered voters from their rolls due to conflicting statements on jury summons between 2004 and 2007; Harris County removed 315; Tarrant County removed 233; and Lubbock only removed 31. Of those totals, 79 purported non-citizens voted in Dallas County; 22 in Harris County; 7 in Tarrant County; and 9 in Lubbock County (see chart 2-1, below). Of the 1,341 people who furnished conflicting statements on their jury summons and voter applications in these four counties, less than 9% had ever voted.

Chart 2-1

Counties	Number of Registered Voters Removed from the Rolls, 2004-2007	Number of Removed Voters Who Voted
Dallas	762	79
Harris	315	22
Tarrant	233	7
Lubbock	31	9

In order to determine the citizenship status of these individuals, the drivers license records of removed registered voters with a voting history were examined for each county (except for Dallas;¹¹⁶ see chart 2-2). Of the 38 records of alleged non-citizen voters that were examined, 13 (over 30%) reported that they were born in the United States or provided proof of their naturalized status when they applied for a driver's license. This left 26 records of individuals whose citizenship status was unknown. While the Department of Public Safety collects various personal documents for processing driver's license applications, it did not verify the official citizenship status of its applicants prior to October 1, 2008.¹¹⁷

Chart 2-2

Counties	Number of Removed Voters Who Have Voted	According to driver's license records, the number of removed voters who were born in the U.S. or are naturalized citizens	Number of voters whose status could not be ascertained from DPS records
Dallas	79	*	*
Harris	22	3	19
Tarrant	7	3	4
Lubbock	9	7	2

¹¹⁵ Letter from Susan Reed, District Attorney, Bexar County to Greg Abbot, Texas Attorney General, December 28, 2007.

¹¹⁶ Due to a lack of resources, the Texas Department of Public Safety was unable to fully research all of the individuals in the Dallas file without disrupting their driver's license application processing.

¹¹⁷ Robert Burroughs, Texas Department of Public Safety, Testimony before the House Committee on Elections, April 15, 2008.

Given its time and resource constraints, the subcommittee chose one county to examine as a sample. Harris County is the largest county in the state with the largest percentage of foreign born persons (24%) among the three counties with data available.¹¹⁸ Also, Harris County has been at the center of the debate over additional voter requirements with the county's Tax Assessor Collector, Paul Bettencourt, testifying in support of requiring additional voter identification before the Texas House Committee on Elections¹¹⁹ and the Committee on House Administration in Congress.¹²⁰ Additionally, Harris County provided the full committee with access to hundreds of documents which would facilitate additional inquiry, including voter registration applications, and juror applications of individuals it claimed were non-citizen registered voters. Thus the subcommittee chose to focus on Harris County for additional study.

Specifically, the subcommittee wanted to know if additional U.S. citizens were included in lists of alleged non-citizen voters. If non-citizens were included on the voter rolls, the subcommittee wanted to find out why and how they became registered. In order to conduct this inquiry, the subcommittee attempted to contact the 19 individuals in Harris County whose official status was not ascertained under the DPS screening and ask them about their citizenship status and voter history.¹²¹

Of the nineteen records sought, the subcommittee was able to obtain contact information for seventeen individuals. The subcommittee made at least two attempts to contact each of those individuals in person and left letters¹²² for those individuals who were not at home. Of the seventeen attempted contacts, the subcommittee was able to interview five people who were identified by Harris County as alleged non-citizen voters.¹²³ The results of those interviews are detailed below. The identities of the respondents are not included for the purposes of this report.

Interviews with Purported Non-Citizen Voters

Case A was a non-citizen who was registered by an independent organization carrying out a voter registration campaign, but did not vote. The subcommittee was able to speak with his spouse. She reported that her husband told the voter registration organization that he was not a citizen, but the organization indicated to him that he could register if he had a driver's license. He indicated on his voter registration application that he is not a citizen.¹²⁴ Even though he registered to vote, Case A did not vote. Since then, Case A has become a U.S. citizen and now serves as a police officer with the Houston Police Department. The issue of his voter registration as a non-citizen was brought to light during the naturalization process. If had voted, they were told, he would have been ineligible to become a citizen. Ironically, since becoming a citizen, Case A has not registered to vote again.

¹¹⁸ U.S. Census Bureau. *2006 American Community Survey*.

¹¹⁹ Paul Bettencourt. Testimony before The Texas House Committee on Elections. January 25, 2008.

¹²⁰ Paul Bettencourt. Testimony before Committee on House Administration, Jun 22, 2006.

¹²¹ See Appendix VII for the questionnaire used in this study.

¹²² See Appendix VIII for the letter used in this study.

¹²³ Two of the respondents to the interviews were the spouses of the individuals, speaking on their behalf.

¹²⁴ See Appendix IX.

Case B is a non-citizen from Mexico who did register to vote and voted in one local election. He claims he was led to believe by a friend that he could register to vote because he has a driver's license. Case B, however, did not falsify his voter registration application. He checked 'no' that he is not a citizen when he registered to vote.¹²⁵ Despite indicating that he is not a citizen, Case B's voter registration application was approved and he received a voter registration card from Harris County. When he went to vote, Case B again asked if he was eligible to vote, and was told that he could as long as he had a driver's license.¹²⁶ Even after being taken off the rolls, Case B still receives voter registration applications from Harris County. He continues to submit them with the citizenship box checked 'no.'

Case C is a naturalized citizen who was born in India. The subcommittee was able to speak with her spouse about her case. She registered to vote and voted only after becoming a U.S. citizen. She has a residence in Harris County, but spends 5 days a week living and working in an adjacent county to run a family business. Case C checked "no" on a jury summons because she wanted to indicate that she was not a citizen of Harris County, and thus wasn't eligible for jury duty. The Harris County Tax Assessor Collector mistakenly identified her as a non-citizen and removed her name from the rolls. She has not re-registered to vote since then.

Case D is a naturalized citizen who was born in Czechoslovakia.¹²⁷ She testified that she registered to vote only after she became a citizen in 2004. However, her records indicate that she was registered to vote by the Department of Public Safety when she renewed her driver's license in 1995. She was removed from the rolls in 2002, two years before she obtained her citizenship. Despite registering again after becoming a citizen, she had to vote provisionally in her first election as a U.S. citizen and consequently lost her vote.

Case E is a naturalized citizen from the West Indies who has lived in the U.S. since the age of 14. She mistakenly registered to vote when she applied for a driver's license when she was 19. She voted 12 years later, prior to obtaining her citizenship. Case E claimed that she made a mistake when she registered to vote, and was led to believe that she could vote.

The sub-committee was unable to contact two individuals who explicitly wrote that they were not citizens. Case F wrote Harris County's Tax Assessor Collector's Office directly to say that he is not a citizen and wished to be removed from the voter rolls. Case G explicitly stated on his juror application, "I am not a citizen of the U.S." However, neither voter registration applications nor voter histories for either of these individuals were provided, so it was difficult to discern any information from their cases.

¹²⁵ See Appendix X.

¹²⁶ Case B did not speak fluent English and required a translator to conduct the interview.

¹²⁷ Modern day Slovakia.

Results and Analysis

Of the twenty-two voters in Harris County who were removed from the voter rolls from 2004-2007, at least six were misreported to be cases of non-citizen voters. Five of those individuals were confirmed to be Americans. One person, Case A, though registered as a non-citizen, did not vote. Two of those removed from the voter rolls were actually born in the United States. Three were naturalized citizens when they voted.

Table 2-3

Number of alleged non-citizen voters in Harris County	Number of alleged non-citizen voters determined to be citizens by their driver's license application	Number of alleged non-citizen voters determined to be citizens by in-person interviews*	Number of alleged non-citizen voters who did not vote*	Number of alleged non-citizen voters whose voter application was approved*
22	3	2	1	2

*These results were determined from in-person interviews with five of the total number of alleged non-citizen voters in Harris County.

Only two of the five individuals interviewed were actual cases of non-citizen voting. Two others indicated that they are not citizens in writing, but the sub-committee was unable to reach them for further details. Both of the individuals who were interviewed were either uninformed or misinformed about their ability to vote, and in the latter instance by elections officials themselves. Case E was mistakenly registered as a teenager, and only voted 12 years after of being on the voter rolls. She did not know that her actions were illegal and was not aware of the possible consequences for her actions. Her ignorance of the law parallels that of the individuals involved in the Calhoun County case, who were led to believe they could vote legally because they had a driver's license. If there were greater civic education for non-citizens, these rare occurrences may be less frequent.

Likewise, Case B was led to believe that he was able to vote, despite his non-citizen status. Contributing to his confusion, Harris County election officials approved his voter application even though he clearly marked that he is not a citizen.¹²⁸ Even after taking Case B off of the voter rolls, the county continues to send mixed messages about his eligibility by continuing to send voter registration applications to his residence. As mentioned previously, this is not an isolated case of Harris County registering applicants who truthfully acknowledge that they are not citizens. Case A also did indicated that he was not a citizen on his voter registration.¹²⁹ (However, that individual did not vote.) The non-citizen voter discovered in the Vo-Heflin race affirmed his non-citizen status on his voter registration application and should not have been approved to vote. Additionally, 34 voter applications were provided to the committee by Harris County where applicants checked that they were not citizens. Harris County provided the applications as evidence

¹²⁸ see Appendix X.
¹²⁹ see Appendix IX.

that non-citizen voter registrations are indeed a problem. If the applications were properly processed, however, those non-citizens would never have been added to the voter rolls.

The interviews conducted by this subcommittee also highlight the real risk of disenfranchising legitimate voters when cross-referencing two databases to verify an individual's citizenship status. This is particularly true when neither system is designed to perform that task. Non-citizen voting statistics that are produced using a jury-pool citizenship verification methodology are ultimately unreliable. Case D in particular raises questions about the process. She registered to vote after becoming a naturalized citizen and two years after being removed for listing herself as a non-citizen on a jury summons. The fact that the affidavit she signed in her jury summons came before she affirmed that she is a citizen on her voter registration did not deter Harris County from removing the individual from the voter rolls.

Through the subcommittee's sample of the thirty-eight voters who have been removed from the voter rolls for allegedly not being U.S. citizens in Harris, Tarrant and Lubbock counties, 15 individuals were discovered to be citizens. The rate of citizen purging was particularly high in Lubbock County where 7 out of 9 purged voters were born in the United States.¹³⁰ Additional research is necessary to determine whether the remaining 16 voters who were purged from the three counties voter rolls were actually U.S. citizens.

Finally, the scarcity of non-citizen voters in elections should also be noted. Harris County has 2 million registered voters. Only 22 votes over a four year period were allegedly cast by non-citizens. The sample confirmed that at least 25% of those cases were misreported. Only 2 cases were confirmed to be cases of non-citizen voters, leaving 14 that are yet to be confirmed either way. Solutions that address the rare occurrence of non-citizen voting should match its scale and not overreach with proposals that threaten to disenfranchise more voters than it protects.

Difficulty in Determining Citizenship

Despite the rarity of cases of non-citizen voters, several advocates believe that a proof of citizenship requirement to register to vote is necessary to prevent illegal voting.¹³¹ This would require individuals to provide a birth certificate, passport or certificate of naturalization in order to register to vote. Opponents of this proposal express concern that it would severely limit voter registration efforts and disenfranchise large segments of the population who do not have their documents.¹³² There is no official citizenship list that available to state government that can be cross-checked to verify an individual's official status.¹³³

¹³⁰ See Table 2-2.

¹³¹ Karen Brooks. "Non-citizen votes focus of House," *Dallas Morning News*, November 30, 2007.

¹³² Luis Figueroa, attorney, Mexican American Legal Defense Fund. Testimony before the Texas House Committee on Elections on HB 626, March 28, 2007.

¹³³ Texas State Auditor's Office. "An Audit Report on the Voter Registration System at the Secretary of State's Office," November 2007. Available at <http://www.sao.state.tx.us/reports/main/08-012.pdf>.

Highlighting the potential for the disenfranchisement of American citizens are cases of Texans who are currently having difficulty satisfying proof of citizenship requirements in order to obtain a passport. Because of a new passport requirement that becomes effective in June 2009 to cross the U.S. border, many people who live in South Texas are applying for passports.¹³⁴ The federal government, however, is denying passports to many people who were born with the assistance of a midwife, leaving many in a state of limbo.

During the 1970s and 1980s, there were several convictions of midwives who admitted to fraudulently registering children who were not born in the United States. As a result, a list of midwives was developed and maintained by federal government officials and is now used to challenge the citizenship status of Texas residents.¹³⁵ Many of these residents are poor or elderly, and do not have access to additional documentation to make a claim to American citizenship. Those who are being denied in most cases are social security card holders as well as registered voters, tax payers and even ex-military personnel.¹³⁶ Many are even 2nd and 3rd generation American citizens who have resided their entire lives in places all over the country and who have never had their citizenship status brought into question until now.¹³⁷ Thousands of Texas residents face a challenge to their claim to Texas citizenship.¹³⁸

The problem extends beyond the border region of Texas. There is at least one case of a lifelong Austin resident who is currently unable to receive a copy of his birth certificate due to a challenge to his citizenship status. Born to a midwife in Austin in 1952, Manuel Cardenas is now unable to receive a duplicate birth certificate from the Texas Bureau of Vital Statistics. The problem seems to have been caused by the Bureau's reluctance to recognize an order of a judge in 1958 to correct the name of the father on his birth certificate and issue a corrected copy.¹³⁹ As a result, Mr. Cardenas is in legal limbo, unable to claim American citizenship. He can neither leave the country on his own free will, nor be deported. His case, among thousands of others, highlights the practical limitation of requiring voters to prove their citizenship in order to vote.

Problems with Voter Registration Matching

While many citizens have difficulty proving their official status for the purpose of applying for passports and duplicate birth certificates, many residents in Texas have

¹³⁴ Jaime Diez, Immigration Attorney. Testimony before the House Committee on Elections, September 5, 2008.

¹³⁵ Lisa Brodyaga, Immigration Attorney. Testimony before the House Committee on Elections, September 5, 2008.

¹³⁶ Celestino Gallegos, Immigration Attorney. Testimony before the House Committee on Elections, September 5, 2008.

¹³⁷ Kevin Sieff. "Stuck in a Free Country." *Brownsville Herald*, July 20, 2008

¹³⁸ Lisa Brodyaga.

¹³⁹ Gregory Sisco on behalf of Manuel Cardenas. Written testimony provided to the subcommittee on mail-in ballots.

difficulty simply registering to vote due to issues with database matching.¹⁴⁰ According to the Secretary of State, from January 1, 2006 through October 10, 2006, 49,271 voter registration applications were unable to be matched to Texas Drivers' License (TDL) records (roughly 10.6% of all TDL submissions), and an additional 14,603 were unable to be matched to Social Security Administration records (about 27% of all submissions.) In April, 2008, Rep. Hochberg requested from the Secretary of State a sample of 300 applicants for voter registration in Harris County, Bexar County and Dallas County who were initially rejected during the voter registration verification process.¹⁴¹ Rep. Hochberg's office used the data to determine why applicants were initially rejected by the Secretary of State during the matching process. They compared each applicant's registration information as submitted by the counties to the database information used by the Secretary of State for verification. Of the 300 applicants initially rejected by the Secretary of State through its database verification process, 277 were positively identified by Rep. Hochberg's office on an individual case-by-case analysis (see Table 2-4). His office determined that strict voter registration matching rules which do not allow for variations in hyphenated names, typos or maiden names has led to the rejection of qualified voters.

Table 2-4

	Study sample of voter registrations initially rejected	Number of applicants verified through a case-by-case analysis	Number of applicants registered on 8/1/2008	Number of applicants registered on 10/1/2008
Harris County	100	85	35	56
Bexar County	100	95	90	92
Dallas County	100	97	89	90
Total	300	277	214	238

As the result of this inquiry, the Secretary of State adjusted its matching criteria to account for reasonable variations in individuals' names. The new verification criteria ignores "Jr." and "Sr." suffixes and spaces between names, and will compare all of the components of a hyphenated name in order to verify the applicant.¹⁴² The Secretary of State now also provides counties with the DPS record corresponding to the submitted drivers license number so that the counties can more easily discover and correct entry errors that may have been made on the first submission of the information to the state.¹⁴³ The Secretary of State requires counties to double check their entry data whenever an application is rejected as not matching the drivers' license or social security files, and correct any data entry errors, before sending a rejection notice to the applicant.

¹⁴⁰ Mark Greenblatt. "Thousands in Harris County may be wrongly banned from ballot box," *KHOU - Houston*. October 25, 2008. Available at: http://www.khou.com/topstories/stories/khou081022_rm_voting-registration-troubles_.13aff3a36.html

¹⁴¹ Ann McGeehan, Director of Elections, Secretary of State's Office. Email to Rep. Scott Hochberg in response to an information request, October 16, 2006.

¹⁴² Deputy Secretary of State, Coby Shorter. Letter to Rep. Scott Hochberg, July 24, 2008. See Appendix XI.

¹⁴³ Ann McGeehan, Director of Elections, Secretary of State's Office. Memo to voter registrars, election administrators and data processors regarding enhancement to DPS live check verification. September 29, 2008.

It is unclear, however, whether all counties perform the double check required by the Secretary of State. Rep. Hochberg's office followed up their initial inquiry by verifying whether the qualified voters initially rejected by the state in their study sample were actually ultimately registered to vote.¹⁴⁴ Of the three counties, Bexar and Dallas appear to have performed the double check recommended by the Secretary of State, and registered over 94% of the individuals positively identified by October 1, 2008. Harris County, however, had only registered 35 of 85 positively identified individuals by August 1st and only registered 56 by October 1st. After Rep. Hochberg discovered this discrepancy, staff in the Dallas County elections office told Rep. Hochberg that Dallas County does double check the applications before sending rejection notices, while staff in the Harris County voter registration office told Rep. Hochberg that applications were only double checked after an applicant had responded to a rejection letter.

The relatively small amount of analysis done by Rep. Hochberg, with assistance from the Secretary of State's staff, pointed to various limitations in the state's matching system and inconsistencies in its implementation by the counties. Prior to Rep. Hochberg's independent investigation, there was no analysis of whether this system was disenfranchising voters or even whether it was accurately performing its task of assigning unique voter identifying numbers to each new voter.

The data developed by Rep. Hochberg and the Secretary of State's staff led to significant changes to improve the system, and attention to inconsistencies at the county level. Yet there is no ongoing process to monitor the accuracy of the system, either at the state level or the combined state/county system. With the voting rights of thousands of Texans at stake, regular data collection, analysis and reporting should be a routine part of the operation of the voter matching system.

¹⁴⁴ Texas Secretary of State. "Election Advisory No. 2006-19."

Findings and Recommendations

- 1) Additional voter education and voter notification precautions are required in order to prevent non-citizens from registering to vote. The voter application and voter registration card should include information on the penalties for non-citizen voting.
- 2) Errors by county elections officials lead to registering persons who mark on their application that they are non-citizens. The registration process should be reviewed at a local level to prevent such errors from occurring.
- 3) People who want to get out of jury duty or believe that they are not eligible for jury because they don't consider themselves to be residents of the county sometimes check that they are not a citizen despite their actual citizenship status. Additional instructions should be provided by Texas Counties to persons called for jury duty, informing them of consequences of fraudulently marking "non-citizen" to get out of jury duty.
- 4) The method of using jury summons to purge non-citizens from the rolls has disenfranchised several U.S. citizens from voting. The purging process should be revised at the state level to protect citizens' right to vote, particularly new citizens.
- 5) Additional research into allegations of non-citizen voting is required with the cooperation of the Department of Public Safety and county officials to more accurately determine the number of Americans that are mistakenly removed from the voter rolls for non-citizenship, and to develop policy proposals who specifically address the relatively small number of cases where non-citizens mistakenly register to vote.
- 6) In order to guarantee that all eligible voters who register to vote are actually registered, the Secretary of State should enforce its requirement that all counties double check rejected applications on a case-by-case basis, and periodic audits should be performed to verify that county elections officials are fulfilling their obligation to the Texas electorate. The Secretary of State should also continue to work to improve its matching process, and should regularly produce statistical data and detailed samples of rejections so that problems can be routinely discovered and corrected. The Secretary of State should report such information to appropriate committees of the House and Senate.

Appendices

Appendix I: Election Code Referrals to the Office of the Attorney General, Indictments Pending Resolution

Election Code Referrals to the
Office of the Attorney General
Indictments Pending Resolution

County	Defendant	Allegation	Election Involved	Cause Number	Indictment Charge	Indictment Date	Election Code/Penal Code Provision
Starr	Mary Lou Garza	Illegal voting	2006 Primary Election	07-07-09768 CR	1 count of unlawful delivery of a certificate	05/24/07	EC 13.145
Starr	Oralia Frausto	Illegal voting	2006 Primary Election	07-05-09738 CR	15 counts of possessing a ballot without the voter's consent	05/24/07	EC 86.006
Starr	Maria Dolores Gutierrez Gonzales	Illegal voting	2006 Primary Election	07-05-09739 CR 07-05-09742 CR	29 counts of possessing a ballot without the voter's consent.	05/24/07	EC 86.006
Panola	Drew Nixon	Official oppression	2006 Special Election	07-05-09243 CR	Illegally committing acts of official oppression	06/28/07	PC 39.03
Starr	Noelia Lopez	Illegal voting	2006 General Election	07-07-09767 CR	1 count illegal voting	07/18/07	EC 64.012
Duval	Lydia Molina	Unlawful assistance, unlawful buying and selling of ballot materials	2006 Primary Election	08-01-09864 CR	6 counts unlawful possession of a mail-in ballot	01/30/08	EC 86.006
Duval	Maria Soriano	Unlawful assistance, unlawful buying and selling of ballot materials	2006 Primary Election	08-01-09863 CR	6 counts unlawful possession of a mail-in ballot	01/30/08	EC 86.006
Duval	Elva Lazo	Unlawful assistance, unlawful buying and selling of ballot materials	2006 Primary Election	08-01-09865 CR	2 counts unlawful possession of a mail-in ballot	01/30/08	EC 86.006
Duval	Maria Trigo	Unlawful assistance, unlawful buying and selling of ballot materials	2006 Primary Election	08-01-09866 CR	2 counts unlawful possession of a mail-in ballot	01/30/08	EC 86.006

9/29/2008

Appendix II: Election Code Referrals to the Office of the Attorney General, Prosecutions Resolved

Election Code Referrals to the
Office of the Attorney General
Prosecutions Resolved

County	Defendant	Allegation	Election Involved	Cause Number	Conviction Charge	Resolution Date	Election Code/ Penal Code Provision	Sentence
Bee	Melva Kay Ponce	Illegal assistance and illegal voting	2004 General Election	B-05-2101-0-CR-B	Attempted illegal voting	7/26/2005	EC 64.012	2 years deferred, 100 hours community service, \$1,000 fine
Hardeman	Johnny Akers	Possession of an official ballot by another	2004 Primary Election	13.446	Possession of official ballot or carrier envelope of another	11/4/2005	EC 86.006	2 years probation, \$2000 fine
Nueces	Virginia Ramos Garza	Unlawful assistance, unlawfully influencing voter	2006 Primary Election	05-CR-9806-4	4 counts of possessing an official ballot or carrier envelope of another	3/22/2006	EC 86.006	1 year pretrial diversion, can not campaign until course in election law is taken.
Nueces	Elida Flores	Unlawful assistance, unlawfully influencing voter	2006 Primary Election	05-CR-9805-4	1 counts of possessing an official ballot or carrier envelope of another	3/22/2006	EC 86.006	1 year pretrial diversion, can not campaign until course in election law is taken.
Nueces	Isabel Lisa Gonzales	Unlawful assistance, unlawfully influencing voter	2006 Primary Election	05-CR-9808-3	2 counts of possessing an official ballot or carrier envelope of another	3/22/2006	EC 86.006	1 year pretrial diversion, can not campaign until course in election law is taken.
Nueces	Josefina Suarez,	Method of returning marked ballot, unlawful assistance, assisting voter	2005 School District Election	05-CR-9807-1	1 count of illegally possessing an official carrier envelope of another	5/1/2006	EC 86.006	1 year deferred adjudication, \$500 fine, prohibited from assisting filling out/ completing application for early ballot by mail
Reeves	Trinidad Villalobos	Method of returning marked ballot	2004 Primary Election	25185	4 counts of possession of an official ballot or official carrier envelope or another	6/7/2006	EC 86.006	10 days jail and 6 months probation.
Bowie	Willie Ray	Unlawfully obstructing watcher, unlawfully witnessing application for more than one ballots, unlawful assistance, security of ballots, ballot boxes and envelopes.	2004 Primary Election	06M1309-CCL	Possessing an official ballot or carrier envelope of another	7/17/2006	EC 86.006	8 months deferred, \$200 fine, no assisting while on probation with mail in ballots
Bowie	Jamillah Johnson	Unlawfully obstructing watcher, unlawfully witnessing application for more than one ballots, ballot boxes and envelopes.	2004 Primary Election	06M0302-CCL	Possessing an official ballot or carrier envelope of another	7/17/2006	EC 86.006	6 months deferred, \$200 fine, no assisting while on probation with mail-in ballots
Bowie	Melinda Hunter	Unlawfully obstructing watcher, unlawfully witnessing application for more than one ballots, ballot boxes and envelopes.	2004 Primary Election	06M0301-CCL	Possessing an official ballot or carrier envelope of another	7/17/2006	EC 86.006	Entered into a pretrial diversion contract, 6 months, no assisting while on probation with mail-in ballots
Nueces	Maria Flores	Unlawful assistance, unlawfully influencing voter	2006 Primary Election	06-CR-2116-B	2 counts illegal voting	8/4/2006	EC 64.012	\$750 fine
Reeves	Anita Baeza	Method of returning marked ballot	2004 Primary Election	25186	5 counts of illegally possessing and transporting ballots for another person.	8/28/2006	EC 86.006	Plead to pre-trial diversion program includes 6 mo probation
Callhoun	Debra Briseno	Illegal voting	2006 Primary Election	2006-8-6465, 2006-8-6466, 2006-8-6467, 2006-8-6468, 2006-8-6469	Illegal voting as a party, tampering with a governmental record	6/22/2007	EC 64.012 / PC 37.10	5 years TDCJ
Refugio	Raymond Villarreal	Unlawful assistance	2006 Primary Election	2007-2-4810	1 count tampering with governmental record, possessing the ballot of another	10/9/2007	EC 86.006 / PC 37.10	90 days jail, 5 years probation, resign his position, \$1500 fine, additional \$1000 fine
Starr	Jose Renee Gomez	Illegal voting	2006 General Election	07-05-09243 CR	Illegal voting	05/01/08	EC 64.012	2 years probation and \$300 fine and \$313 court costs.
Starr	Oscar Rios	Possessing a ballot without the voter's consent.	2006 Primary Election	07-05-09741 CR	Possessing a ballot without the voter's consent.	05/01/08	EC 86.006	2 years probation and \$300 fine and \$313 court costs.
Potter	Michael C. Shumate	Unlawfully accepting campaign donations	2008 Primary Election	56732-B; 56733-B; 56734-B;	1 count organized criminal activity. Acquired an unlawfully accepting campaign donations.	06/12/08	EC 253.002(b)(6)	6 months in county jail and eight years probation.

Appendix III: Sworn testimony of an Escapee in *The Honorable B.E. "Slim" Speights, v. Bob Willis*

The sworn testimony of an Escapee in *The Honorable B.E. "Slim" Speights, v. Bob Willis*, provided by the office of Buck Wood:

Q: Do you have your driver's license with you?

A: I sure do.

Q: 101 Rainbow Drive.

A: I believe it's actually 109 now. They changed the number.

Q: You haven't changed it?

A: I haven't changed it, no, sir.

Q: So you think it's 109. Did your Private Mail Box (PMB) stay the same, 9135?

A: Yes, it has.

Q: Okay. Do you own any real property, house, lot, anything like that?

A: Yes.

Q: And I won't go into detail; just, where are they?

A: We own a RV lot here in Mesa, Arizona.

Q: Okay. RV lot?

A: Yes.

Q: Okay. And what's the address on that?

A: 7750 East Broadway.

Q: Okay.

A: Number 909 in Mesa, Arizona, 85208.

Q: Do you receive mail at this address:

A: Yes, we do.

Q: You're a member of the Escapees?

A: Yes, I am.

Q: Both you and your wife?

A: Both of us.

Q: And how long have you been a member?

A: Since '95.

Q: And you both have been members the whole time?

A: Yes.

Q: And when did you register to vote in Polk County, Texas?

A: I believe it was '96.

Q: Okay. And did you both register there at the same time?

A: Yes, we did.

Q: Okay. And you have some cars registered in Polk County?

A: Yes.

Q: And what would those be?

A: A Suburban. And we had our travel trailer, but we switched; we sold it. And now just the Suburban is registered in Texas.

Q: Okay. You don't have any cars registered anywhere else?

Q: So you think you registered in '96 in Polk County?

A: To vote?

Q: M'hmm.

A: Yes, sir. I believe it was '96. It was the same time that we got our licenses.

Q: Okay. All right. And your wife is registered there too?

A: Yes, sir.

Q: Now, the records show that you voted in the general election last November in Polk County?

A: That's correct.

Q: Okay. And, to your knowledge, did your wife vote there also?

A: Yes, sir.

Q: Okay. When's the last time that you were in Polk County, Texas?

A: I've never been.

Q: Okay. Where did you register?

A: We registered in Amarillo.

Appendix IV: Letter to Paul Bettencourt

10/24/2006

Paul Bettencourt
Harris County Voter Registrar
P.O. Box 3527
Houston, Texas 77253-3527

REF: [REDACTED]

To Whom It May Concern:

I am writing to you to let you know that I register to vote in 1996 and that at the time I was not aware of the rules. I was told to register and they told me it was ok to register even if I was not a US Citizen. At that time I was not familiar with the laws of the U. S. but know that I have been going to school I have the knowledge know that it was wrong to register and I would like for my name to be taken off the list because I am not a U.S. Citizen.

Thank you,
[REDACTED]

Date of Birth
[REDACTED]



235357065

Appendix V: Letter to Paul Bettencourt

[REDACTED]

December 4, 2006

Harris County Voter Registrar
Hon. Paul Bettencourt
P.O.Box 3527
Houston, Texas 77253-3527

RE: Voter Registration - [REDACTED]

Dear Sir:

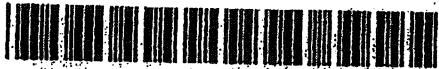
I am writing this letter to withdraw voter's registration form that I had mailed to you some time ago. At that time I did not understand that I was not eligible to vote since I am a permanent resident of the United States and not a U.S. citizen.

I previously resided at: [REDACTED]

I regret the inconvenience caused.

Sincerely,

[REDACTED]



235898374

Appendix VI: Two Voter Registration Applications with Conflicting Information

Record Type: VOTER Record ID: 50301134 Imaging Dept. ID: 001166491

Prescribed by the Secretary of State 17.97 BPM1.1-97		VOTER REGISTRATION APPLICATION (SOLICITUD DE INSCRIPCION DE VOTANTE)		Additional Information		For Official Use Only PCT Cert. Num. EDR	
Last Name (Apellido usual)		First Name (NOT HUSBAND'S) (Su nombre de pila) (Siendo mujer: no el del esposo)		Middle/Maiden Name (if any) (Segundo Nombre/Apellido de Soltera (si tiene))		Former Name (Nombre anterior)	
Residence Address: Street Address and Apartment Number, City, State, and ZIP. If none, describe where you live. (Do not include P.O. Box or Rural Rt.) (Domicilio: Calle y número, número de apartamento, Ciudad, Estado, y Código Postal. A falta de estos datos, describa la localidad de su residencia.) (No incluya su apartado postal ni su ruta rural.)							
Mailing Address, City, State and ZIP. If mail cannot be delivered to your residence address. (Dirección postal, Ciudad, Estado y Código Postal) (Si es imposible entregarle correspondencia a domicilio)				Gender (Optional) (Sexo) (Opcativo)		<input checked="" type="checkbox"/> Male (Hombre) <input type="checkbox"/> Female (Mujer)	
Date of Birth (Fecha de Nacimiento) (mes, día, año)		City, County, and State of Former Residence (Ciudad, Condado, Estado de su residencia anterior)		Social Security No. (Optional) (Número de Seguro Social) (Opcativo)			
Check appropriate box: I AM A UNITED STATES CITIZEN (Marque el cuadro apropiado: Soy Ciudadano/a de los Estados Unidos)				TX Driver's License No. or Personal I.D. No. (Issued by TX Dept. of Public Safety) (Optional) (Número de su licencia tejana de manejar o de su Cédula de Identidad expedida por el Departamento de Seguridad Pública de Tejas) (Opcativo)			
I understand that giving false information to procure a voter registration is perjury, and a crime under state and federal law. (Entiendo que el hecho de proporcionar datos falsos a fin de obtener inscripción en el registro de votantes, constituye el delito de perjurio o declaración falsa y es una infracción sancionable por ley federal y estatal.)				Telephone Number (Optional) (Número telefónico) (Opcativo)			
I affirm that I (Declaro que soy) <ul style="list-style-type: none"> am a resident of this county; (residente del condado) have not been finally convicted of a felony or if a felon I am eligible for registration under section 13.001, Election Code; and (que no he sido condenado/s en definitiva por un delito penal, o en caso de tal condena, que estoy habilitado/a para inscribirme, a tenor de lo dispuesto por la sección 13.001 del Código Electoral) have not been declared mentally incompetent by final 				Check one (Marque el cuadro) <ul style="list-style-type: none"> <input type="checkbox"/> New (Nuevo) <input type="checkbox"/> Change (Cambiar) <input type="checkbox"/> Replacement (Reemplazar) 			
SEP 25 2000 -- OCT 25 2000				Signature of Applicant or Agent (Firma del solicitante o de un representante) (Firma del/ de la solicitante o de un representante si es firmado por testigo y fecha. (Firma del/ de la solicitante o de un representante si la firma es de un(a) nombre del/ de la solicitante usando letra de molde y ponga la fecha.)			
				1166491			

Appendix VI (cont.)

Texas Voter Registration Application

www.sos.state.tx.us

Prescribed by the Office of the Secretary of State 42.04 BPM1.1-04
For Official Use Only

Please complete sections by printing legibly. If you have any questions about how to fill out this application, please call the Secretary of State's Office toll free at 1-800-252-VOTE(8683), TDD 1-800-735-2989.

Este formulario para inscribirse para votar tambien está disponible en Español. Para conseguir la version en Español favor de llamar sin cargo 1-800-252-8683 a la oficina del Secretario de Estado.

Qualifications

- You must register to vote in the county in which you reside.
- You must be a citizen of the United States.
- You must be at least 17 years and 10 months old to register, and you must be 18 years of age by election day.
- You must not be finally convicted of a felony, or if you are a felon, you must have completed all of your punishment, including any term of incarceration, parole, supervision, period of probation, or you must have received a pardon.

Complete These Questions Before Proceeding

- Check one New Change Replacement
- Are you a United States Citizen? Yes No
- Will you be 18 years of age on or before election day? Yes No
- If you checked 'no' in response to either of these questions, do not complete this form.
- Have you ever voted in this county for a federal office? Yes No
- If you answered "no" to this question, be sure to see special instructions regarding identification requirements on the reverse side of the application.
- Continue below to complete application.

Last Name	First Name	Middle Name (if any)	Former Name
[REDACTED]	[REDACTED]	[REDACTED]	

Residence Address: Street Address and Apartment Number, City, State, and ZIP. If none, describe where you live. (Do not include P.O. Box or Rural Rt.)

[REDACTED]

Mailing Address: Address, City, State and ZIP: If mail cannot be delivered to your residence address.

[REDACTED]

Date of Birth: month, day, year	Gender (Optional)
[REDACTED]	<input checked="" type="checkbox"/> Male <input type="checkbox"/> Female

I understand that giving false information to procure a voter registration is perjury, and a crime under state and federal law.

TX Driver's License No. or Personal ID. No. (Issued by the Department of Public Safety) If none, give last 4 digits of your Social Security Number

[REDACTED]

I affirm that I

- am a resident of this county;
- have not been finally convicted of a felony or if a felon I have completed all of my punishment including any term of incarceration, parole, supervision, period of probation, or I have been pardoned; and
- have not been declared mentally incompetent by final judgment of a court of law.

Date: 10 10 104

Check if you do not have a social security, driver's license, or personal identification number

Telephone Number, Include Area Code (Optional)

[REDACTED]

City and County of Former Residence In Texas

X [REDACTED]

Signature of Applicant or Agent and Relationship to Applicant or Printed Name of Applicant if Signed by Witness and Date.

Appendix VII: Survey Questionnaire

Questionnaire

ID:

Does the voter have a DL record? Y N

Does the voter have a voter registration record? Y N

Does the voter have record of voting? Y N

Where was the person born?

What is the citizenship status of the person?

When did they receive status?

Did the person register to vote? Y N

Where / When / How?

Did the voter vote in an election? Y N

If the person voted or registered to vote (when he/ she shouldn't have), what led the person to believe they were able to do so?

Notes:

Appendix VIII: Survey Letter



RAFAEL ANCHIA
MEMBER

STATE OF TEXAS
HOUSE OF REPRESENTATIVES

August 2, 2008

Dear

I stopped by earlier today to ask you some questions on behalf of a subcommittee of the Texas House Committee on Elections. We are interviewing certain members of the public who may have been removed from the voter rolls erroneously, so that we may be able to correct any errors that occur in verifying the eligibility of voters.

It is very important that we have the opportunity to speak with you. Our conversation would only take 5-10 minutes of your time, and any personal information you reveal would be kept absolutely confidential. The information you provide us will help us ensure that we maintain free, fair and open elections in Texas.

Please contact me on my cell-phone during this weekend [REDACTED] or at my office during the week (512-463-0746). I hope we have the opportunity to speak soon.

Sincerely,

Damien Brockmann
Legislative Director
Rep. Rafael Anchia



Paul Bettencourt

Harris County Tax Assessor-Collector and Voter Registrar

<p>Texas Voter Registration Application</p> <p>Please complete sections by printing legibly. If you have any questions about how to fill out this application, please call the Secretary of State's Office toll free at 1-800-252-VOTE(8683), TDD 1-800-735-2989.</p>		<p>www.sos.state.tx.us</p> <p>Prescribed by the Office of the Secretary of State 17.04 09/01.1.01</p> <p>For Official Use Only</p>	
<p>Qualifications</p> <ul style="list-style-type: none"> You must register to vote in the county in which you reside. You must be a citizen of the United States. You must be at least 17 years and 10 months old to register, and you must be 18 years of age by election day. You must not be finally convicted of a felony or if you were finally convicted of a felony, you must have had your civil rights restored. 		<p>Complete These Questions Before Proceeding</p> <p>Check one <input checked="" type="checkbox"/> New <input type="checkbox"/> Change <input type="checkbox"/> Replacement</p> <p>Are you a United States Citizen? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Will you be 18 years of age on or before election day? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If you checked "no" in response to either of these questions, do not complete this form.</p> <p>Have you ever voted in this county for a federal office? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If you answered "no" to this question, be sure to see special instructions regarding identification requirements on the reverse side of the application.</p> <p>Continue below to complete application.</p>	
<p>216727362</p>			
Last Name	First Name	Middle Name (if any)	Former Name
<p>Residence Address: Street Address and Apartment Number, City, State, and ZIP. If none, describe where you live. (Do not include P.O. Box or Rural Rt.)</p>			
<p>Mailing Address: Address, City, State and ZIP. If mail cannot be delivered to your residence address.</p>			
Date of Birth: month, day, year	Gender (Optional)	<p>I understand that giving false information to procure a voter registration is perjury, and a crime under state and federal law.</p> <p>I affirm that I</p> <ul style="list-style-type: none"> am a resident of this county; have not been finally convicted of a felony or if a felon I have completed all of my punishment including any term of incarceration, parole, supervision, period of probation, or I have been pardoned; and have not been declared mentally incompetent by final judgment of a court of law. 	
TX Driver's License No. or Personal ID. No. (Issued by the Department of Public Safety) If none, give last 4 digits of your Social Security Number	<input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	<p>7.4.29.04</p> <p>2/17/04</p>	
<input type="checkbox"/> Check if you do not have a social security, driver's license, or personal identification number	Telephone Number, Include Area Code (Optional)	<p>Date</p>	
City and County of Former Residence In Texas	<p><input checked="" type="checkbox"/> Signature of Applicant or Agent and Relationship to Applicant or Printed Name of Applicant if Signed by Witness and Date.</p>		
Houston, Harris	<p>MAIN</p>		

February 16, 2006

TO WHOM IT MAY CONCERN:

The above is a true and certified copy of the Harris County voter registration record for [redacted]. The original Voter Registration Application was submitted to the Harris County Voter Registration Department on April 17, 2004; and certificate number [redacted] was issued. This registration was cancelled on February 16, 2006 at the voter's request.

Telephone number, social security number, driver's license, or personal identification number "if shown" on original applications are omitted in accordance with Section 13.004 of the Texas Election Code.

Office of Paul Bettencourt
Tax Assessor-Collector and Voter Registrar

By: Chris Berman
Deputy Tax Assessor-Collector

Date: 2/16/2006

TAX OFFICE SEAL

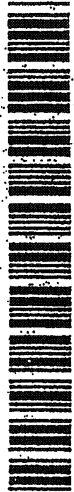
PB: cg

ER Record ID: 51910768 Imaging Dept. ID: 233600617
Texas Voter Registration Application

Please complete sections by printing legibly. If you have any questions about how to fill out this application, please call your local voter registrar or the Secretary of State's Office toll free at 1-800-252-VOTE (8683), TDD 1-800-735-2989, www.sos.state.tx.us.

Qualifications

- You must register to vote in the county in which you reside.
- You must be a citizen of the United States.
- You must be at least 17 years and 10 months old to register, and you must be 18 years of age on or before election day.



233600617

received a pardon.

If you are already registered to vote, you do not need to complete this form. If you have moved, you must complete this form to update your address. If you do not need this form, please pass it on to someone who could use it.
 Prescribed by the Office of the Secretary of State
 For Official Use Only
 VREG 05E 06/05

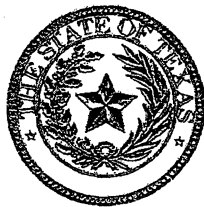
Este formulario para inscribirse para votar también está disponible en Español. Para conseguir la versión en Español favor de llamar sin cargo 1-800-252-8683 a la oficina del Secretario de Estado.

Complete These Questions Before Proceeding

- Check one New Change Replacement
 Are you a United States Citizen? Yes No
 Will you be 18 years of age on or before election day? Yes No
 Are you interested in serving as an election worker? Yes No

• Continue below to complete application.

Last Name		First Name		Middle Name (if any)		Former Name	
Residence Address: Street Address and Apartment Number, City, State, and ZIP Code. If none, describe where you live. (Do not include P.O. Box or Rural Rt.)		Gender (Optional) <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female		I understand that giving false information to procure a voter registration is perjury, and a crime under state and federal law. Conviction of this crime may result in imprisonment up to 180 days, a fine up to \$2,000, or both.			
Mailing Address: Street Address and Apartment Number or P.O. Box, City, State and ZIP Code. If mail cannot be delivered to your residence address.		TX Driver's License No. or Personal ID No. (Issued by the Department of Public Safety)		I affirm that I			
Date of Birth: month, day, year		TX Driver's License No. or Personal ID No. (Issued by the Department of Public Safety)		<ul style="list-style-type: none"> • am a resident of this county; • have not been finally convicted of a felony or if a felon I have completed all of my punishment including any term of incarceration, parole, supervision, period of probation, or I have been pardoned; and • have not been declared mentally incompetent by final judgment of a court of law. 			
<input type="checkbox"/> Check if you do not have a Social Security Number Telephone Number, Include Area Code (Optional)		<input type="checkbox"/> Check if you do not have a driver's license, or personal identification number If no TX Driver's License, give last 4 digits of your Social Security Number		Signature of Applicant or Agent and Relationship to Applicant or Printed Name of Applicant if Signed by Witness and Date. Date: 1/24/06			



Coby Shorter, III
DEPUTY SECRETARY OF STATE
State of Texas

July 24, 2008

The Honorable Scott Hochberg
State Representative
P.O. Box 2910
Austin, Texas 78768-2910

Dear Representative Hochberg:

Earlier this month you met with Secretary Wilson just before he resigned from this office. I understand that you discussed the process for verifying new voter applicants and some concerns about new voter applicants that cannot be verified due to either typographical errors or differences between databases in how spaces or hyphens within a name are treated. We appreciate your interest and creative proposals to address this issue.

You will be happy to know that our programmers are currently making several changes to the live check verification criteria to account for the differences in how spaces in a name are treated between the driver's license database maintained by the Department of Public Safety and how a county may enter a name when it is submitted to our office for verification. We are adjusting the verification criteria to ignore spaces between names. Accordingly, the example of a voter who registers as "DE LA GARZA" will be validated even though the DPS database records that name as "DELAGARZA". We are also adjusting the verification criteria to ignore suffixes, such as "Jr." and dashes and hyphens. We will compare the data as originally submitted by the county, and then remove the applicable spaces, dashes, hyphens, and or suffixes before we re-compare the data for verification. This change is being programmed and is scheduled to be tested early next month, and if the testing is acceptable, will be deployed before the end of August.

We are also investigating how to send to the counties the reason that a voter cannot be verified. This will require a change to the application itself, and requires changes to the source code, which is not under our control. We are working with our vendors to identify a process to change the application to include the reason for rejection, but this will take time and money and will probably be implemented in 2009.

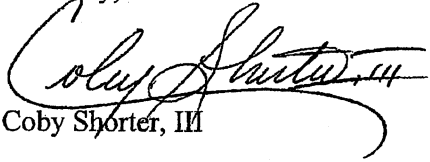
Lastly, you have expressed that some counties may not be sending out letters of rejection or confirmation in the required minority languages. Our office has provided all voter forms in English and Spanish to all counties. Early next month, we are hosting a conference in Austin for county voter registrars and we have over 400 persons registered. We will emphasize this requirement with the voter registrars at the seminar. In addition, if you have evidence of specific counties that are not following the law, please let us know and we will be happy to follow up with those counties and explain the law.

Post Office Box 12697, Capitol Station
Austin, Texas 78711-2697
512-463-5770

Appendix XI (cont.)

We are proud of our voter registration process and believe it is fair, accessible and ensures a clean list of eligible voters. However, processes can always be improved and we value your interest and considerable expertise in helping us improve the voter registration process in Texas. Please feel free to contact me if you have any questions or wish to discuss. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Coby Shorter, III". The signature is written in a cursive style with a large initial "C" and a long horizontal flourish extending to the right.

Coby Shorter, III