

Approved: February 11, 2011
Date

MINUTES OF THE HOUSE ELECTIONS COMMITTEE

The meeting was called to order by Chairman Schwab at 9:00 a.m., on February 9, 2011 in Room 546-S of the Capitol.

All members were present .

Committee staff present:

Doug Taylor, Office of Revisor of Statutes
Katherine McBride, Office of Revisor of Statutes
Martha Dorsey, Kansas Legislative Research Department
Jay Hall, Kansas Legislative Research Department
Diane Brian, Committee Assistant

Conferees appearing before the Committee:

Ann Byington, Kansas Association for the Blind and Visually Impaired
Kari Ann Rinker, State Coordinator of Kansas NOW
Kevin Myles, President of Kansas State Conference of the NAACP
Charles Gokey, Policy Associate, ACLU
Stephanie Mott, Kansas Equality Coalition
Elizabeth Post, Vice President of League of Women Voters'
Mindy Brissey, Legislative Advocate of AFT Kansas
John Settich, Ph.D., voter in Atchison, Kansas

Others attending:

See attached list.

The Chair resumed the Hearing on **HB 2067- Voter photographic identification requirements.**

Ann Byington spoke in opposition to **HB 2067, (Attachment 1).**
Kari Ann Rinker appeared in opposition to **HB 2067, (Attachment 2).**
Kevin Myles appeared in opposition to **HB 2067, (Attachment 3).**
Charles Gokey spoke in opposition to **HB 2067, (Attachment 4).**
Stephanie Mott spoke in opposition to **HB 2067, (Attachment 5).**
Elizabeth Post spoke on behalf of Ernestine Krehbiel in opposition to **HB 2067, (Attachment 6).**
Mindy Brissey appeared in opposition to **HB 2067, (Attachment 7).**
John Settich, Ph.D. spoke in opposition to **HB 2067, (Attachment 8).**

Written testimony in opposition to **HB 2067**, was submitted by:

Will Crossley, Counsel and Director of Voter Protection, Democratic National Committee, **(Attachment 9).**

Mark Goodman, Legislative Chair for Kansas County and District Attorney's Association, **(Attachment 10).**

Elias L. Garcia, State Director of LULAC, **(Attachment 11).**

Bob Harvey, Volunteer for AARP, **(Attachment 12).**

Staff provided a written report on Current Law vs. **HB 2067** Comparison, **(Attachment 13).**

Testimony was concluded and committee members asked questions.

There being no further conferees, the hearing on **HB 2067** was closed.

The next meeting is scheduled for February 11, 2011.

The meeting was adjourned at 10:50 a.m.

HOUSE ELECTIONS COMMITTEE

9:00 AM,

Room 546-S, Capitol Building

GUEST LIST

2/9
DATE: , 2011

NAME	REPRESENTING
Mindy Brissey	American Federation of Teachers - KS
Donna Rae Pearson	
D. Bonnet	Wearney & Assoc.
Rep. Ben S. A	Topeka Branch NAACP
Ped Smith	KDOR
David Clauser	KPOR
Kathleen Cummings	Topeka
Monica E. Peck	Topeka 912
ERIC RICKER	SECRETARY/ OF STATE
Katrina Abraham	intern for Kelly Meigs
Norma Hunter	Kansas Latino & Hispanic Affairs
Shawn Bryant	Kansas African Amer. Affairs Com
Kevin Andrews	Kansas NAACP
Kyrion Cox	Wichita Branch NAACP Youth Council
Andre Means	wichita branch NAACP youth council
Isiah Myles	Wichita Branch NAACP youth council
Kevin Myles	Kansas NAACP
Elizabeth Post	League of Women Voters KS

HOUSE ELECTIONS COMMITTEE

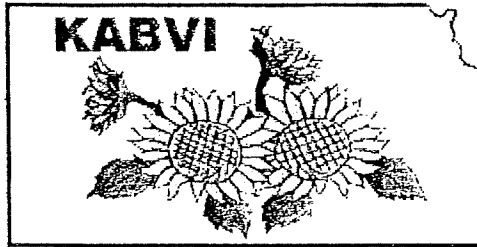
9:00 AM,

Room 546-S, Capitol Building

GUEST LIST

DATE: 2/9, 2011

NAME	REPRESENTING
Chloe Mangers	Self
Dan Kleiman	KC STAR
Stephanie M. M. M.	KEC
Brad Bryant	Sec. of State
BRYAN A. GISKY	SEC. OF STATE
John F. Schich PhD	SELF
Rep. Duffin	KS 84th Dist
Colleen Talley	KABVI
James L. Bolden	KABVI
Charles Golec	NAACP
John Weatherford	ACLU
Thomas Witt	ACLU
Earl Glyn	KEC
Amber Veredo	Franklin Center
	KS NOW



Kansas Association for the Blind And Visually Impaired

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February 5, 2011

TESTIMONY CONCERNING HOUSE BILL 2067 – OPPOSITION AS CURRENTLY DRAFTED

The Kansas Association for the Blind and Visually Impaired (KABVI) is concerned about any appearance that voter fraud might take place. We have fought long and hard over many years to insure that qualified Kansas voters who are blind and visually impaired have equal access, and opportunities to vote which are not restricted by their visual impairments. We have made progress in these areas, and certainly, we thus want the voting process to remain private, independent, and verifiable for our blind and visually impaired members and associates.

At our Organization's annual meeting last fall, our membership in attendance therefore modified a position we have taken previously concerning voter identification. We have in the recent past opposed an identification requirement for voters at polling places because some of our blind members and associates are well known in their communities, do not travel by air, and thus, given that they can not get a drivers' license, have not seen the

need to have a Kansas photo identification card. Getting such an identification card requires considerable planning, expense and effort for someone who may not have transportation to a drivers' license examining center.

Last fall, our membership in attendance at our annual meeting modified that position. KABVI now no longer opposes mandatory photo identification at the polling places. Our membership felt that all blind citizens should be encouraged to obtain and maintain photo identification, not just for voting, but because it should be an obligation of citizenship to have such identification.

We therefore did not expect to be opposing any voter identification bill introduced. We must oppose House Bill 2067, however, as written, because it goes much further than simply requiring photo identification at the polls. This bill would require a great deal of amending to be acceptable. It might be easier to simply start over. Some of the other provisions of the Bill quite clearly discriminate against blind and visually impaired voters.

The Bill provides that, if a person is only seeking the Kansas photo identification card for purposes of voter registration, then there will be no charge for the identification, provided that the applicant meets certain means tests. For a Kansas citizen who does not have a drivers' license, and who only requires a photo identification card so that they can vote, but who also does not meet the means test provisions, the charge for the photo identification card clearly constitutes a fee for voting. Paying a fee to vote has never been a part of voter requirements in this State, and has been struck down as illegal in States where any such fees, no matter how subtly imposed, have been required. This is a bad precedent for Kansas to set. If a photo identification is going to be required to vote at the polls, it should not be an item one has to pay for. Means testing in order to receive a free photo identification means that some citizens will end up paying a fee to vote.

This Bill also requires a rigorous identification protocol for individuals wishing to vote by mail, or to receive an advanced ballot. With the strengthened voter registration requirements, including the obligation to provide photo identification to register to vote, requiring the identification for the first time advanced voter seems redundant. It also would require additional arrangements for transportation and readers' services for most blind voters just to obtain the advanced ballot. Offering the free use of a Xerox machine at the election office is almost laughable. The costs in both money and effort, are not related to the cost of one Xerox copy. They are related instead to the efforts of locating the required documents, which are not provided to citizens who are blind in accessible format, and to transportation costs. With the strengthened security added to the voter registration process, no real security will be added to the process by requiring the extra identification steps in order to vote an advanced ballot.

The person whom the Bill is attempting to target is the dishonest person who would obtain someone else's advance voting rights through fraudulent representation. Yet what the Bill, as currently drafted, actually does is puts the honest citizen, advanced voter on trial, not someone intending to commit voter fraud.

The new signature verification requirements in the Bill also have this same impact. Many individuals who are blind, visually impaired, or otherwise disabled, do not have the ability to affect a signature in the traditional sense. Many individuals who acquire a disability subsequent to registering to vote are going to experience profound changes in their signatures as a result of acquired disability or disabilities. The Bill seems to maintain the definitions of a signature in Section (7) of 2010 Sup. K.S.A. 25-2309, crafted a few years ago by a coalition of people having disabilities in which KABVI participated. The new signature requirements appear to create conflicts with this existing signature language. We strongly believe that existing statutory language is quite adequate concerning signatures.

Lastly, there is a hypocritical aspect to this Bill in regard to a section of existing law which is not changed. The Bill continues to make it a crime for a person assisting a disabled voter to exercise "UNDUE" influence. The term "undue" is an equivocation. It is not measureable, and it makes this aspect of the law more difficult to prosecute. Any influence whatsoever from a third party assisting a disabled person to vote is completely and totally unacceptable. It is ironic in the extreme that a bill that alleges to eliminate voter fraud still makes it legal to exercise influence over a disabled voter, just so long as that influence is not "undue."



KANSAS NOW

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February 08, 2011

To: Members of the House Elections Committee
FR: Kari Ann Rinker, State Coordinator
Kansas NOW
RE: HB 2067 Opponent

Today, I respectfully submit to you testimony in opposition to House Bill 2067. A voter and elections bill may seem like an unusual issue for a women's rights organization to become involved with, but Kansas NOW recognizes that the provisions contained within this bill will disenfranchise many women, primarily those women of low income, seniors and women who have gone through name changes.

This bill will create obstacles to these women by requiring extensive documentation from them to prove that they own their names and their citizenship. It will eliminate door to door, mobile registration and advance voting drives. These drives allow busy women, women with limited transportation availability, the elderly and disabled to exercise their guaranteed right to vote with an ease that they may not experience in other aspects of their lives. Making their right to cast their vote as convenient as possible is a good thing. This is not something to be feared or reviled.

Kansas NOW sees no fault in the current system that couldn't be changed incrementally or administratively. Non-incremental policy proposals are unpredictable in their consequences. This bill creates a maze for legitimate voters, a maze full of bureaucratic red tape...a maze built with taxpayer funding. The bill's many exceptions and exemptions make this attempt at reform a political shell game, indicating the suspicious nature of many of its provisions.

We should not be considering such a costly and unnecessary proposal, during a session in which the Governor's proposed budget has dropped a program such as Early Head Start. A program that provides necessary services to infants and toddlers and low income pregnant women. The fiscal note for the bill is as disgraceful as the bill itself, falling significantly short of the real costs associated with these changes. While a less evasive voter ID bill was budgeted at a cost of \$14 million for the first three years by the state of Missouri and Indiana spends millions

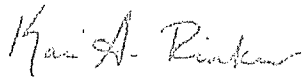
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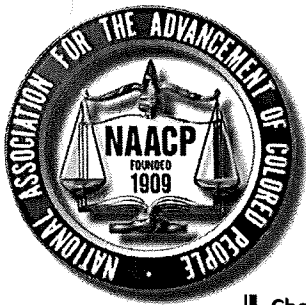
each year, the Kansas fiscal note is \$13,500 for two fiscal years. This simply does not make sense.

The questions that have been posed to Secretary Kobach regarding his pet project have been answered with generalizations and anecdotes that do not allow for reasonable and factual examination of the proposed legislation. Due to this complete lack of data to correspond with said need for voter reform, I contend that this bill is simply a guise for the Secretary's true intent, which amounts to an extraordinary and costly measure to suppress votes in Kansas. It is a reemergence of the days of poll taxes, segregation and barriers that my feminist predecessors have fought against. I strongly urge this committee to reject it.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Kari A. Rinker".

Kari Ann Rinker
State Coordinator



The Kansas State Conference of NAACP Branches

829 N. Market St. Wichita KS 67207 – (316) 541-1305

"101 Years, Speaking Truth to Power"

Testimony regarding HB 2067 – Voter Photographic ID Requirements

February 9th, 2011

Chairman Schwab, Vice Chairman Goico, and members of the Committee on Elections,

Kevin Myles
President

Glenda Overstreet
1st Vice-President

Nathaniel McLaughlin
2nd Vice-President

Lavonta Williams
Secretary

Renee Wiggins
Treasurer

Loris Jones
Glinda Theus
Phil Black
Sandra Rankin
Education

Darrell Pope
Dr. Charles Coleman
Legal Redress

Glenda Overstreet
Victor Newson
Erlene Goff-Lewis
Political Affairs

Wandra Minor
Membership

Dr. Mildred Edwards
Health

Rev. Joe Clark
Bishop Jeanette James
Rev. Ben Scott
Religious Affairs

Renee Wiggins
Kevin Myles
Communications

Stephanie Franklin
Parliamentarian

Cedric Patton
Youth Works

Wandra Minor
ACT-SO

Leneer Barber
Virgina Sewing
Elaine Guillory
Sandra Beverly
Executive Committee

My name is Kevin Myles and I am the President of the Kansas State Conference of the NAACP, representing more than 2,000 registered voters throughout the State of Kansas.

We are here to voice our opposition to HB2067, the proposed Voter ID bill. To be clear, we are not opposed to efforts to ensure the integrity of our voting system in principle, we are opposed to the specific plans that the Secretary has put forth. You will hear testimony today regarding the cost of this measure, the fact that our current system has already proven secure, the fact that necessary changes and reforms to our current system could be handled administratively, and that the proposed consolidation of powers within the Secretary of State's office is absolutely unwarranted. We will therefore direct our testimony to the issue of disenfranchisement, and how provisions in this current proposal would result in voter suppression.

This issue should be of grave concern to us all. For while we should be undoubtedly be concerned if even a single fraudulent vote is cast, we should be even *more* concerned if even a single legal voter is disenfranchised. And that is because voting is one of our most fundamental constitutional rights. No law, no tariff, and no ordinance should ever be imposed that would deprive any Legal, Law Abiding, American citizen of the franchise.

The Secretary's proposed bill requires that an Election Officer certify a person's immigration status at the time of registration. Now that's not particularly onerous, but the language in Section 7, subparagraph L, parts 1 through 6; specifies that their status must be confirmed by submission of a physical drivers license, birth certificate, or passport, or by a photo-copy of said documents. What this means is, if a group or organization such as the NAACP or the League of Women Voters wanted to set up a table to register people to vote at a fair or a community forum, *as both organizations have done for more than 50 years*, unless the unregistered prospective voters happened to have a photo copy of their license in their pockets, they could not be registered.

In 2008, the Wichita NAACP partnered with KDGS 93.9 Radio Station, Sunflower Community Action, Alpha Kappa Alpha Sorority, and Outback Steakhouse, to host a community Registration forum in a popular Wichita Park. We were joined in the park by Wichita Mayor Carl Brewer who even helped us register people to vote in that traditionally underserved area. We gathered more than 350 registrations in just a few short hours. But had this proposed bill been in effect at the time, ALL 350 LEGAL REGISTRATION APPLICATIONS WOULD HAVE BEEN REJECTED BY THE SECRETARY'S OFFICE.

Members of the Committee, please consider that there is NO additional information that could be gleaned from a photo copy of someone's driver's license that could not just as easily be obtained through a query of their driver's license number, as is permissible under current statute. In fact, a folded and mailed photo copy of a drivers license, which could quite easily be forged or manufactured, could not itself serve as verification of citizenship. Instead, upon receipt of such a document, election officials would still have to verify a citizen's voting credentials and citizenship through a query of their Drivers license number. Current statute allows for the submission of a Drivers License number with a Voter Registration application – but this proposed bill radically changes that process, and adds an obstacle for registration; one that provides NO net benefit in terms of information or ease of processing, but would instead virtually eliminate traditional get-out-the-vote drives and door-to-door canvassing, and would authorize the outright rejection of registration applications from legal, law abiding, American citizens.

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The intent of this newly included language becomes even more dubious when you consider that the bill also contains specific language that would ensure that other communities are not similarly disenfranchised. On page 18, in Section 7, subparagraph L, part 4; newly naturalized citizens would be allowed to submit the *number* of their certificate of naturalization *without* having to obtain and submit paper copies. Section 7, subparagraph L, part 6; allows Native Americans to submit their tribal enrollment *number without* having to obtain and mail in paper copies. – The use of a Document number is a uniform and common practice that facilitates on-site registrations while still protecting people's personal data - But native born American citizens, low income persons who would typically be registered in a traditional get-out-the-vote type drive or initiative will no longer be allowed to register using their driver's license number as is currently permissible in EVERY STATE in the Nation. They will no longer be allowed to register at community forums or workshops after hearing and learning about the issues. This bill places an unnecessary bureaucratic obstacle in their path which would prevent on-site registrations in most instances. Instead they will be required to go to Kinko's to obtain paper copies of their personal documents just to prevent the Secretary's Office from rejecting their Legal and Legitimate registrations.

On Monday, you heard testimony from our Secretary of State regarding the very foundation of our Nation, and I quote, "*A constitutional republic rests on two foundations; one is the Constitution itself, the other is the trust of the citizenry that elections are free and that the will of the people is being conveyed securely through elections that are free from fraud.*" He went on to say that when "*that trust begins to break down, the foundation of the republic erodes.*"

I would respectfully ask that we each reconsider that testimony today. For if the Secretary is to be believed, then one of the foundations of society is the trust of the citizenry that elections are FREE and THE WILL OF THE PEOPLE IS BEING CONVEYED.

But how are we to reconcile that foundational principle with the provisions in this bill that would allow for the rejection of Voter Registration applications; not for fraud, not for ineligibility, but for failure to comply with an newly created administrative hurdle; one that solves NO problems, one that serves no necessary purpose, and one that provides no additional information that is not already provided under current statute? How are we to trust that our elections are FREE and representative of the WILL OF THE PEOPLE, when this body is being asked to consider a bill whose newly inserted language would inhibit the legal and legitimate registration of American Citizens, who by circumstance find themselves poor or low income, through the unnecessary prohibition of traditional get-out-the-vote activities?

We would also ask that you consider that the bill would require that ALL voters show their driver's license or photo ID at their polling place. But, it does not instruct the election workers to examine the documents to determine citizenship or eligibility. Rather, it instructs election officials to compare the name and address as recorded on the photo ID with the information recorded in the Voter Registration database. And that if there is a discrepancy between their driver's license and the information contained in the Voter Registration records (such as a change of address, or change of last name due to marriage), that legally registered voter would be given only a provisional ballot. Their only other alternative, after having stood in line and waiting on a Tuesday afternoon, only to find out their status was being challenged by an administrative database discrepancy, would be to go home, grab a utility bill, go back to the polling station and start in the line all over again. Many people finding themselves in a similar situation would simply go back to work, and their votes would be lost.

Chairman Schwab and members of the committee, we ask that you seriously consider the fact that while these clear and foreseeable outcomes may be in fact be unintended, they are never-the-less very well known and well documented Voter Suppression tactics. The States of Colorado, Ohio, Nevada, and Florida have all faced legal or administrative action after implementing procedures and policies that created needless technical barriers to voter registrations as this bill would do. And the States of Ohio, Florida, and Wisconsin, have all faced legal action as a result of "no match – no vote" policies where citizens ballots were challenged as a result of typographical or database discrepancies (such as address changes, married names, and/or hyphenated names) as this bill would allow.

When you consider the costs of this proposal: When you consider the fact that the Secretary testified last week concerning 221 cases of voter fraud, yet a review of his submitted testimony shows that fewer than 5 of those cases could have been prevented through the implementation of this bill: When you consider the fact that the language in this bill will create unnecessary obstacles for legal and law-abiding citizens and may prevent otherwise qualified voters from exercising their constitutional right to participate in our elections: we ask you to reject this bill.

Respectfully,
Kevin Myles
President; Kansas State Conference of NAACP Branches

**Testimony of the ACLU of Kansas and Western Missouri
Regarding the Safe and Fair Elections Act
February 8, 2011**

**Charles Gokey
Policy Associate, ACLU of Kansas and Western Missouri**

Background:

Voter fraud has recently become more widely discussed in Kansas, primarily due to claims made during the November 2010 election. As a result, the most wide reaching, restrictive voter ID law in the nation (the Safe and Fair Elections Act) has been put forward as a solution to voter fraud in the state.

The ACLU does not wish to downplay the seriousness of voter fraud when it occurs. As an organization that holds the right to vote as sacrosanct, we recognize that safe and fair elections are of the utmost importance. However, legislation proposed to that end should take into account the nature and size of the problems facing elections in Kansas. Laws aimed at protecting elections should therefore be based on rigorous research and a thorough understanding of the issues so as not to unnecessarily burden the government or individual voters. The Safe and Fair Elections Act fails to meet this standard, however laudable its goal of protecting the electoral process may be.

What is actually known about voter fraud in Kansas suggests that the proposed legislation is an unnecessarily radical solution to whatever problem may exist. In the midst of a \$550,000,000 budget shortfall, Kansas cannot afford to spend millions of dollars on a bill based on incomplete and anecdotal evidence. This is particularly true of the Safe and Fair Elections Act, which introduces greater bureaucratic burdens on both the state government of Kansas and on individual voters than any comparable law in the nation.

I. The Prevalence of Voter Fraud:

More research is needed before the frequency of voter fraud in Kansas can be stated with a degree of certainty. This is a point conceded even by proponents of the Safe and Fair Elections Act, including the bill's author Kris Kobach (1). Unfortunately this research has not yet been conducted, despite the fundamental importance of this data to the formulation of any voter fraud legislation. New, systematic research on voter fraud seems particularly vital in that existing data, as inadequate as it may be, strongly suggests that voter fraud is too rare in Kansas to warrant radical new legislation.

While no comprehensive study has been undertaken, available statistics suggest that the national rate of voter fraud is very low. For example, rigorous scrutiny of elections in Washington and Ohio found voter fraud rates of just 0.0009% and 0.00004% respectively (2)(3). The Brennan Center for Justice points out that this is roughly the same rate at which Americans are struck and killed by lightning (4).

Another study commissioned by the federal Election Assistance Commission in 2006 concluded that the prevalence of voter fraud nationwide is at best uncertain (5). However, according to the New York Times, even that conclusion downplayed findings from within the study showing there is little evidence of widespread voter fraud (ibid).

These studies echo the results of a large scale effort to fight voter fraud launched by the Bush administration in 2002. Between 2002 and 2007, that program resulted in only 120 charges and 86 convictions nationwide, or roughly one confirmed case per state every three years (ibid). While these are national statistics, no compelling evidence has been put forward to suggest that voter fraud in Kansas is more common than elsewhere in the nation.

In fact, the available data regarding voter fraud in Kansas strongly resembles national statistics. Over the last decade leading up to the November 2010 elections, there have been 20 alleged cases of voter fraud in Kansas

and 7 convictions (6)(7). During that same period, 5,286,081 votes were cast in general and midterm elections in the state. According to these official figures, rates of confirmed fraud in Kansas are equivalent to (or lower than) elsewhere in the nation: roughly 0.00015%.

It's possible that fraud is under-reported in Kansas, as is contended by some proponents of voter ID legislation. However, a comprehensive list of voter fraud complaints compiled in 2008 by the Secretary of State's office fails to support that conclusion. The report documents all unverified complaints involving voter fraud between 1998 and 2008 (including "mere allegations and complaints of wrongdoing"). The list is not limited to formal reports, but includes complaints received by any authority in the state. Many of these complaints pertain to activities that are not illegal, and only a relatively small fraction involves allegations of fraudulent votes being cast. However, even this very inclusive report lists few potential irregularities over ten years, with roughly 90% of the counties in Kansas failing to report a single complaint (8). Strangely, it is this report that has been put forward by proponents of the Safe and Fair Elections Act as proof of the need for new legislation.

This report and similar evidence that has been presented in favor of the Safe and Fair Elections Act does not represent the kind of systematic research needed to pass effective legislation. The first reason for this is that these reports are unconfirmed, uninvestigated, and lacking in meaningful detail. These reports gloss over important facts to the point that the information contained in the testimony can be meaningless or even misleading. Take, for example, one of the very first reports listed in the testimony recently presented by the Secretary of State. It reads simply, "Mother voted for her son, forged signature." This case was addressed in slightly more detail in the original 2008 report that it was drawn from, which stated that the woman in question left a polling place to drive to where her son was going to college nearby to obtain his signature. The controversy arose when a poll worker wasn't sure she was gone long enough to reach her son and return. No further investigation was conducted to verify whether the woman was in fact gone long enough to reach her son, or if, for example, her son met her part way, nor was the woman asked to comment. Moreover, it was never alleged that the woman in question was attempting to do anything more than help her son cast a legitimate ballot. The evidence presented in favor of the Safe and Fair Elections Act is saturated with problems like this, concerning both the truthfulness of the allegations and the nature of the alleged voting irregularity.

The second major shortcoming with the evidence presented in favor of the Safe and Fair Elections Act is that the bill does not reflect this data in the ways in which it addresses voter fraud. For example, where the original 2008 report by the Secretary of State's office fails to list a single complaint pertaining to non-citizens voting, the Safe and Fair Elections Act addresses it at length. Moreover, despite the fact that no instances of voting under an assumed name are mentioned by that report, this is a primary focus of the Safe and Fair Elections Act. To address voter fraud effectively, more information is needed than simply the number of unconfirmed complaints of election irregularities. What's necessary is verified data and thoughtful analysis.

In an op-ed for the Wichita Eagle, Kris Kobach responded to opponents of his bill who pointed out that there have only been seven convictions for voter fraud over the past decade with the statement, "Apparently seven is not enough" (9). While Secretary of State Kobach meant the statement ironically, the obvious answer is that eight is in fact not enough when considering wide reaching, admittedly radical, and expensive legislation. With no compelling deadline, there is more than enough time to investigate the problem systematically, and to use this research as the basis for a more effective and fiscally responsible bill.

II. Financial Cost to Kansas Taxpayers

There are a variety of costs associated with voter identification laws; these include the provision of free IDs to voters, voter education, new training of poll workers, additional poll workers needed to compensate for the slower voting process, and restructuring and expanding existing government entities to accommodate new bureaucratic duties. While a fiscal note regarding the Safe and Fair Elections Act has been produced, it addresses very few of these real costs incurred by other states who have enacted voter identification laws. This is particularly troubling because the proposed legislation in Kansas is correctly touted as the largest bill of its kind in the nation. It seems inevitable that the Safe and Fair Elections Act would introduce a number of costs above what other states have encountered in implementing voter identification laws.

The extremely brief fiscal note produced for the Safe and Fair Elections Act lacks in research and meaningful detail. Because of this, it dramatically underestimates what the bill would (or should) cost; either the true cost of the proposed legislation won't be revealed until it's already in place, or the effort to restructure Kansas' elections will be massively underfunded. In contrast to this fiscal note, Missouri's Committee on Legislative Research conducted a thorough study that estimated the cost of implementing a voter identification law in that state to be roughly \$14,000,000 over three years (10). In addition to these state funds, the report concluded that such a law would cost local governments an additional \$4,100,000 or more (*ibid*). These figures reflect extensive analysis of not just the obvious costs of such a bill, but the overall impact on the structure and workload of the state government.

The fiscal note produced for the Safe and Fair Elections Act not only fails to offer comparable analysis, but minimizes or ignores the obvious costs of voter identification laws. For example, this note fails to provide even a rough estimate of the cost of providing free identification cards or birth certificates, stating that those who want them already have them. This has not been the case in other states, where the cost of free identification has approached up to nearly \$500,000 within the first year (11).

Regardless of whether or not this expense can be minimized, the provision of free identification constitutes only a minor fraction of what comparable laws have cost other states. The report omits more substantial costs like voter education, which is vital when election laws change; other states have found it necessary to spend \$1,500,000 or more on this alone (12). In fact, given the radical nature of the Safe and Fair Elections Act, one would expect the cost of voter education to rise.

The fiscal note is also silent on the necessity of expanding and restructuring Kansas' government to accommodate the bill's new duties and burdens. This is somewhat perplexing; it seems paradoxical to tout the Safe and Fair Elections Act as the largest bill of its kind, yet to deny that it will be necessary to expand Kansas' government when other states with more modest laws have needed to do so. For example, Missouri's Committee on Legislative Research concluded that it would be necessary to add over 100 people throughout the state government to support a much smaller law in that state (13). In addition to this, the committee recommended that roughly \$200,000 be set aside in anticipation of overtime for existing employees (*ibid*). Moreover, it was found that 7,210 additional poll workers would be necessary to ensure that elections continued to run smoothly (*ibid*). Elsewhere, Oklahoma State Election Board Secretary Michael Clingman estimated that his department would have to spend roughly \$90,000 per election training new election officials alone (14).

The laws discussed above are far more moderate in scope than the Safe and Fair Elections Act. Those laws did not transform and expand the Secretary of State's office with a wide variety of new duties and powers, nor did

they require that voters prove their citizenship with certain government issued documents when registering, nor did they require the maintenance of a new system for reporting voter fraud, nor did they require that sworn written statements be verified when ballots are dropped off by someone other than the voter, nor did they require that state offices make copy machines available to all Kansans for the purpose of photocopying IDs. These are only a handful of the new duties, both big and small, that the Safe and Fair Elections Act would impose on the state government of Kansas. To claim that these duties can be assumed without substantially restructuring and expanding a variety of government agencies, particularly the Secretary of State's office, is unrealistic in the extreme.

It's worth noting that, while the figures discussed above may seem high, they by no means represent a ceiling on what the Safe and Fair Elections Act would or should cost Kansas. The legislation proposed in this state is far more restrictive and wide reaching than Missouri's voter identification law, and would require a more extensive restructuring of Kansas' government. It seems reasonable, if not inevitable, that the Safe and Fair Elections Act would cost Kansas more than the roughly \$18,000,000 estimated in Missouri. The only alternative would be to cut corners and do a tremendous disservice to the very elections the Safe and Fair Elections Act is meant to protect.

The Safe and Fair Elections Act is touted as the biggest bill of its kind, but biggest doesn't mean best when discussing new legislation. The enormity of the bill is more experiment than necessity. Conducting research into the nature and frequency of voter fraud in Kansas would allow for a more targeted bill, one designed to meet the needs of the state effectively and without waste. Kansas currently faces a \$550,000,000 budget shortfall, and it seems likely that public services in the state will suffer for it. Now is not the time to pass massive, expensive legislation without first thoroughly evaluating what is necessary and effective.

III. Nature and Size of the Bill

Voter identification laws have long been controversial, and those on both sides of the issue have become entrenched in their position. To rehash these arguments here would likely be unproductive under normal circumstances. However, to do so in regard to the Safe and Fair Elections Act would be particularly inappropriate in that it would downplay the unique and experimental nature of this legislation. Unfortunately, what makes this bill unique isn't an innovative approach to election security, but rather the nature and number of restrictions it places on elections.

Some of the provisions of the bill, while uncommon in the extreme, are not altogether unique. For example, requiring a birth certificate (or comparable document) to prove citizenship when registering to vote has been tried once in Arizona. However, the precedent set by Arizona's law makes the inclusion of this requirement baffling; that aspect of Arizona's law was recently struck down by the 9th Circuit for unduly burdening the voters of that state (15). Within the few years that it applied, that law resulted in 30,000 rejected registration application (ibid). Election officials in Arizona have been repeatedly quoted as saying that these applications were largely (if not universally) rejected due to bureaucratic technicalities rather than foul play (16). Unsurprisingly, this requirement also attracted numerous law suits, and the state is still litigating the issue.

Even beyond its disastrous history, the inclusion of this provision seems strange; it's unclear what problem this requirement is meant to address. There's no data suggesting that non-citizens are voting beyond a few extremely rare cases, generally involving a misunderstanding of the law rather than criminal intent. This is true nationally as well as locally (17). There has been only one such case prosecuted in Kansas' recent history;

in that case, a Desert Storm veteran cast a ballot in the mistaken belief that his service made him eligible to vote.

Systematic research, sound data, and compelling evidence should be a prerequisite to such a dramatic proposal, particularly when that proposal has such a problematic history. While proponents of the Safe and Fair Elections Act have put forward a small handful of allegations regarding five non-citizens voting, this hardly seems like a sound basis for amending Kansas' law so drastically. Moreover, while 54 non-citizens were found to have been registered to vote in Kansas (as proponents of the bill point out), it was discovered that this was a result of a bureaucratic error at the DMV rather than an attempt at fraud. Because of their training under the Motor Voter Act, some DMV employees mistakenly asked a number of legally present non-citizens to register to vote when applying for a temporary driver's license. It should be noted that by registering for this license, these non-citizens made their ineligibility to vote clear. This would seem to be a counterintuitive first step in a conscious attempt at voter fraud.

Another experimental aspect of the Safe and Fair Elections Act is the requirement that mail-in ballots be accompanied by a driver's license number, a non-driver identification card number, or alternatively two photocopied documents (one of which must be government issued photo identification). Similar laws around the nation generally lack this strict requirement, and with good reason: it seems to undercut the logic of offering the option of voting through the mail.

Many of those who choose to vote through the mail are people who find it difficult to travel to a polling place; this includes people who may not necessarily meet the uncertain standards that would excuse them from this provision. To some extent, it is specifically because some people lack the means to travel that these ballots are offered. It seems logical to assume that many (if not most) of those who lack the means to travel also lack a valid driver's license. It also follows that those who are unable to travel to a polling place would also find it difficult to travel to a DMV to obtain identification, or to travel to a government office where they would be able to make photocopies of another form of identification.

Much like the provision regarding proof of citizenship, this aspect of the bill seems to burden voters without adding to the security of Kansas' elections. It's unclear how a driver's license number is more convincing proof of identity than, for example, a social security number (which is allowed under Kansas' current law). It's also unclear what problem this requirement is meant to address; there has never been a verified case of voter fraud in Kansas' recent history (or perhaps ever) involving voter impersonation. Before this requirement is signed into law there should be an empirical basis for doing so, as well as an assessment of what impact this may have on Kansas' legitimate voters.

The Safe and Fair Elections Act is bloated with provisions like these that have little actual value in helping to make Kansas' elections more secure. These new requirements wouldn't make the state tougher on voter fraud. Rather, they would serve only to make elections in Kansas cumbersome, both for the government and for individual voters. While voters in Kansas have made election security a priority, the Safe and Fair Elections Act does not reflect that interest as it should. The goal of ensuring the integrity of Kansas' elections would be far better served by a well-considered, targeted bill based on systematic research.

IV. Conclusion

All parties involved in this debate desire the same results: secure elections that run smoothly and afford all eligible voters a fair chance to make their voices heard. The way to achieve this goal is not through

sloganeering or insinuation on either side, but through a systematic evaluation of what problems exist and a cost/benefit analysis of whatever solution is put forward.

The Safe and Fair Elections Act is not the product of this process. With no comprehensive or reliable research having been conducted on voter fraud in Kansas, a fruitful and objective policy discussion is impossible. Because we lack this basic foundation of information, we find ourselves faced with a lumbering behemoth of a bill, one that attempts to fix every problem with Kansas' elections both real and imagined. As a result, Kansas may end up tossing out the baby with the bathwater, with cumbersome, expensive, and ineffective laws. With no compelling deadline, there's time to give Kansas the efficient, effective, fiscally responsible election security it deserves. The way to make Kansas a leader in election security is not to make the biggest law, but rather the best tailored and most effective.

Sources:

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- (3) Spencer Overton, commissioner on the Carter-Baker Commission on Federal Election Reform, available at <http://www.stealingdemocracy.com/facts.cfm#8>
- (4) Brennan Center for Justice, available at <http://www.truthaboutfraud.org/pdf/Policy%20Brief%20on%20the%20Truth%20About%20Voter%20Fraud.pdf>
- (5) New York Times, "In 5 Year Effort, Scant Evidence of Voter Fraud," available at: http://www.nytimes.com/2007/04/12/washington/12fraud.html?_r=2&pagewanted=all
- (6) The Pitch, quoting the Secretary of State's office, available at http://blogs.pitch.com/plog/2009/05/kris_kobach_tells_us_why_hes_r.php
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- (8) Brad Bryant, former Kansas Secretary of State, memo to Kansas Legislative Research Department Feb. 20, 2008
- (9) Kris Kobach, "Voter fraud is a reality in Kansas"
- (10) Missouri Committee on Legislative Research, fiscal note on proposed voter ID bill, available at: <http://www.moga.mo.gov/Oversight/OVER06/fishtm/4947-25T.ORG.htm>
- (11) Number based on lost revenue and the cost of increased work volume: <http://www.indystar.com/article/99999999/LOCAL19/61023042/Election-Guide-Indiana-s-voter-ID-law>
- (12) Georgia Secretary of State Karen Handel, available at: <http://thedemocracydefenseleague.com/news/voter-photo-id-few-problems-seen/>
- (13) Missouri Committee on Legislative Research, fiscal note
- (14) Oklahoma Election Board Secretary Michael Clingman, as quoted by NewsOK.com, available at: <http://newsok.com/article/3214560>
- (15) Reuters, available at: <http://www.reuters.com/article/2010/10/26/us-usa-elections-arizona-idUSTRE69P4T920101026>
- (16) Chris Roads, Pima County Deputy Recorder & Registrar of Voters, available at: <http://www.npr.org/templates/story/story.php?storyId=4991732>
- (17) New York Times, "In 5 Year Effort, Scant Evidence of Voter Fraud"



Our mission is to end discrimination based on sexual orientation and gender identity, and to ensure the dignity, safety, and legal equality of all Kansans.

www.KansasEqualityCoalition.org • 6505 E. Central #219 • Wichita, KS 67206 • (316) 260-4863 • fax (316) 858-7196

Testimony of Stephanie Mott, Kansas Equality Coalition
House Committee on Elections
February 9, 2011
Testimony in Opposition to HB2067

Good morning Mr. Chairman and members of the Committee. Thank you for the opportunity to speak to you. My Name is Stephanie Mott. I am a member of the board for Kansas Equality Coalition, which advocates for fair treatment for gay, lesbian, bisexual and transgendered Kansans, and am also the executive director of the Kansas Statewide Transgender Education Project. I am a transsexual woman. I am here today to talk about existing barriers to voting for transgender people in Kansas, and about how this proposed legislation will make those barriers even more difficult to face, even to the point of causing many transgender individuals to be unable to vote.

When I was in transition, my identification said Steven, although I already looked like Stephanie. When I voted in November, 2008, the election worker publicly challenged my identity. I was required to announce, in clear hearing of everyone in the room, that I was transsexual. Then I was required to explain what that means. The picture on my driver's license looked like me, and my name matched how I was registered to vote, but I was in danger of not being allowed to vote because I am transgender.

If this measure becomes law, people like me will be required to show a birth certificate to register to vote. My birth certificate still says "Steven" and "Male". My driver's license now says "Stephanie" and "Female." I can change my name for about \$30. However, for me to amend my birth certificate, I must complete several years of medically supervised transition, which will ultimately cost more than \$20,000. Because a name change is among the first steps in this long process, my legal name and gender will not match my birth certificate for an extended period of time. Under the provisions of HB2067, I fear that I, and others in my situation, will be disenfranchised.

Of those who have transitioned gender, only one-fifth (21%) have been able to update all of their IDs and records with their new gender. One-third (33%) of those who had transitioned had updated none of their IDs/records. Only 59% reported updating the gender on their driver's license/state ID, meaning 41% live without ID that matches their gender identity. Forty percent (40%) of those who presented ID (when it was required in the ordinary course of life) that did not match their gender identity/expression reported being harassed, 3% reported being attacked or assaulted, and 15% reported being asked to leave.¹

I choose to vote, because I feel that it is worth that chance of being publicly outed. I know of many other transgender people, however, who are afraid that they will be met with questioning, suspicion and resistance: for them, the bar is already too high. I urge this committee not to erect even more barriers to voting in Kansas, and to reject the birth certificate provisions of this bill.

Thank you for your time. I am willing to stand for questions.

¹ National Center for Transgender Equality/National Gay and Lesbian Taskforce
http://transequality.org/PDFs/NTDSReportonHealth_final.pdf

HOUSE ELECTIONS
DATE: 2/9/11
ATTACHMENT: 5



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The League of Women Voters of Kansas Urges the House Election Committee to Defend the Election Process for All Citizens. Do Not Pass H2067

Chairman Schwab and Committee Members:

I am Ernestine Krehbiel, President of the League of Women Voters of Kansas.

I am here today to express the League's strong opposition to HOUSE Bill 2067. I speak for all the local Leagues in Kansas as well as the US League of Women Voters. This bill is aimed at stopping those who impersonate a voter and vote illegally. Out of approximately ten million votes cast in elections in Kansas since 2005, there have been only seven cases of voter fraud investigated and only one prosecuted for cause—that of a person who voted in both Kansas and Missouri. That is 1/10,000,000—or one out of 10 million. And it was NOT a case of voter impersonation that this proposed law is meant to target!!

The Kansas Voter Coalition and the League of Women Voters call on this committee to reject this and similar legislation that wastes the taxpayers' money and we ask that you get back to addressing the real issues affecting citizens of the state – the budget and the economy. Instead of introducing solutions to a nonexistent threat from **voter impersonation**, we would urge legislators to focus on improving the state's ability to provide quality education, social services, police protection, and many other essential government services needed by their constituents. I'm sure you do not need to be reminded of the budget **shortfall** of \$490 million—9% of the budget. We expect each and every legislator to understand the fiscal impact of the bill BEFORE voting.

Conservative estimates of the costs to implement the voter photo ID bill would be \$834,000 the first year and a minimum of \$161,200 annually thereafter. That is ONE MILLION DOLLARS in the first two years alone. The costs include lost revenue from elimination of fees for DMV-supplied photo ID cards, additional training for poll workers, a statewide voter education program and new voter ID cards that include a photo.

This does not include the cost of free copies of birth certificates for indigent voters as no other state has implemented both of these requirements so we do not have that estimate yet of that cost. As you can see, this dwarf's the secretary's estimate; he said he only needed the \$100,000 from HAVA for implementing this law. At a time when state courts are being required to have furlough days, when school boards are reluctantly making plans to cut teachers throughout each of your districts, and mental health and crime prevention programs are being eliminated, it makes no sense for taxpayers to be forced to pay for this costly, unnecessary and suppressive legislation. One million dollars would go a long way to helping some of our mentally ill brave, Iraqi veterans and other whose local mental health services might be chopped cruelly.

In order to avoid disenfranchisement of voters and to withstand court challenges to the constitutionality of a photo ID law on the basis of a financial burden or poll tax, Kansas must provide free photo IDs for voting purposes and free certified birth certificates necessary to register and to acquire the photo IDs. Is the state going to pay for free birth certificates also of all indigent citizens born in other states? There will need to be an expanded bureaucracy to determine standards for one to qualify for a free photo ID and free certified birth certificate.

BUT There is no such thing as a free voter ID. The tax payers will pay for this adventure into fantasy land. There are significant on-going costs for state and local governments, as well as indirect costs for citizens who apply for the ID and potential costs of defending a discriminatory law in the courts.

Even with careful and deliberate planning, however, some states have incurred significant litigation costs. It would be fiscally responsible for Kansas to budget for potential litigation costs, if and when the state passes legislation requiring photo IDs to vote. Not factored in are the considerable costs of legal challenges that Kansas could incur.



HOUSE ELECTIONS
DATE: 2/9/11
ATTACHMENT: 6



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In October 26, 2010, US Court of Appeals for The Ninth Circuit, in a 2-1 decision, held that Arizona's requirements for proof of citizenship for voter registration violated the National Voter Registration Act. In that Federal law, it states that every state agency, EVERY agency, from marriage license bureaus to Medicaid must offer its clients the right to register to vote right there. This is what that Federal law says the agency workers are to ask: "If you are not registered to vote where you live now, would you like to apply to register to vote here today?" The current laws are working very well and our budget will be better off.

Are you sure that this bill 6027 would not violate either the National Voter Registration Law or the Help America Voter Act?

The US Constitution in Article VI: paragraph 2 states that "This Constitution, and the Laws of the United States and all treaties... shall be the supreme Law of the Land and the Judges in every State shall be bound thereby..." Is this proposed state law violating that clause of the constitution?

Photo ID requirements represent the most serious threat in decades to our historic progress in ensuring the right of every eligible American citizen to vote. Research by the Brennan Center for Law and Justice shows that these demands encourage racial and ethnic discrimination at polling places, limit voter turnout, and prevent eligible voters from participating in our democracy. In fact, they do very little to combat the demonstrably rare instances of a voter impersonating someone else at the polls. Indeed, as I said above, there have been no prosecuted cases in our state of such impersonation. This legislation is genuinely a solution in search of a problem.

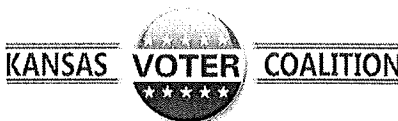
The sheer number of people who could be disenfranchised by this legislation is daunting. Are you aware that approximately one million Kansas women have married names that do not match their birth certificates even should they send for them to show at voter registration? For them, further documentation looms in order for them to vote just because of this bill. At least 18% of Kansans over 65 -- that is 64,400 of our neighbors in Kansas such as your parents or your elderly constituents, do not have valid photo identification. They may have moved to a retirement community or a nursing home so their old drivers license does not match. Many will not even be able to get birth certificates because they were born at home. The elderly population in Kansas is going up annually -- a jump the 50% has been the estimate in a little over 10 years. Will that on going annual cost to implement this law -- \$161,000 -- keep going up and STILL not make our elections any safer or better? In Kansas in 2006 our population that was disabled was 55,542 people. Ultimately, this requirement would disenfranchise the very people who currently must work the hardest to vote at all. The burden will be greatest for those people -- the elderly, low-income, minority and handicapped -- for whom it is most costly and inconvenient to take off work, get transportation, and stand in line to apply for documentation.

There is no evidence that voting by non-citizens is occurring in significant numbers. Indeed, since these activities are illegal in every state for federal elections, reports of prosecution and convictions would abound if significant numbers of people were, in fact, voting illegally. The evidence establishes that current anti-fraud laws work.

Indeed evidence proves that illegal voting is extremely low. At the Federal level only 24 people were convicted of voter fraud between 2002 and 2005. Did you know that Americans are twice as likely to get hit by lightning as to have their vote cancelled out by a fraudulently cast vote.

The right to vote and to have that vote counted fairly and accurately is one of the most important constitutional rights we have; it guarantees all other rights. The Kansas legislature should be in the business of encouraging full participation of our citizenry, not developing ways to limit the right to vote.

The woman of the US had to fight hard for the vote and it was just 90 years ago that that happened. Any proposal that raises barriers to voting is something that ALL Americans should stand against. I strongly encourage you to do the right thing by opposing legislation that is a fear-based, not a fact-based. Instead





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focus on improving polling operations, including training and recruitment of poll workers, and making voting more efficient, secure, and accessible. This is the proven way to ensure fair and democratic elections.

I urge you to vote down voter the photo ID and birth certificate proposal for the sake of our democratic process AND for the sake of the important work you have to do-- solving the Kansas economic problems, the worst in our state's history since the Great Depression.

APPENDICES

1. NATIONAL VOTER REGISTRATION ACT Sec. 1973gg-5 VOTER REGISTRATION AGENCIES

(a) Designation

-
- (2) Each State shall designate as voter registration agencies -
- (A) all offices in the State that provide public assistance; and
- (B) all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities.
- (3)(A) In addition to voter registration agencies designated under paragraph (2), each State shall designate other offices within the State as voter registration agencies.
- (B) Voter registration agencies designated under subparagraph (A) may include -
- (i) State or local government offices such as public libraries, public schools, offices of city and county clerks (including marriage license bureaus), fishing and hunting license bureaus, government revenue offices, unemployment compensation offices, and offices not described in paragraph (2)(B) that provide services to persons with disabilities; and
-
- (i) Distribution of mail voter registration application forms in accordance with paragraph (6).
- (ii) Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance.
- (iii) Acceptance of completed voter registration application forms for transmittal to the appropriate State election official.
- (B) If a voter registration agency designated under paragraph (2)(B) provides services to a person with a disability at the person's home, the agency shall provide the services described in subparagraph (A) at the person's home.
-
- (I) specifies each eligibility requirement (including citizenship);
- (II) contains an attestation that the applicant meets each such requirement; and
- (III) requires the signature of the applicant, under penalty of perjury;

2. STATES FOLLOWING HAVA REQUIREMENTS

23 states and the District of Columbia currently have the minimum HAVA ID requirements - first-time voters who register by mail and do not provide ID verification with their registration must show ID before voting. (CA, DC, ID, IL, IA, ME, MD, MA, MN, MS, NE, NV, NH, NJ, NY, NC, OR, RI, UT, VT, WV, WI, WY)

18 states require ID for all voters. Photo and non-photo ID accepted in these states. (AL, AK, AZ, AR, CO, CT, DE, KY, MO, MT, NM, ND, OH, SC, TN, TX, VA, WA)

4 states require all voters show photo ID. Voters without the proper ID will be offered provisional ballots. (FL, GA, IN, OK The Oklahoma law takes effect July 1, 201)

4 states request all voters show photo ID. Voters without the proper ID can sign affidavits and cast regular (non-provisional) ballots. (HI, LA, MI, SD)

2 states require ID of all first-time voters. Photo and non-photo ID accepted in these states. (KS, PA)





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Source: Pew Center on the States:

<http://www.pewcenteronthestates.org/uploadedFiles/voterID.laws.6.08.pdf>

3. FEDERAL LAW SAYS VOTER CARD NOT TO BE USED FOR OTHER PURPOSES

Pub. L. 104-132, title IX, Sec. 902, Apr. 24, 1996, 110 Stat. 1317, provided that: "Notwithstanding any other provision of law, **a Federal, State, or local government agency may not use a voter registration card (or other related document) that evidences registration for an election for Federal office, as evidence to prove United States citizenship.**" Similar provisions were contained in section 117 of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, and as enacted into law by Pub. L. 104-91, title I, Sec. 101(a), Jan. 6, 1996, 110 Stat. 11, as amended by Pub. L. 104-99, title II, Sec. 211, Jan. 26, 1996, 110 Stat. 37.

4.

PREAMBLE TO THE US CONSTITUTION

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, **promote the general Welfare, and secure the Blessings of Liberty** to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I....

Section. 8. Paragraph 1: The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and **provide for the common Defence and general Welfare of the United States**; but all Duties, Imposts and Excises shall be uniform throughout the United States;

...

Section. 8. Paragraph 18: To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

ARTICLE VI

Paragraph 2: This Constitution, and **the Laws of the United States** which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, **shall be the supreme Law of the Land**; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.





February 8, 2011

The Honorable Scott Schwab, Chairman
House Elections Committee
Statehouse, Romm 561-W
Topeka, KS 66612

Testimony for the Kansas House Elections Committee opposing the Kansas Secure and Fair Elections Act, House Bill 2067.

Stronger voter participation is essential to a democracy and efforts to restrict voting should be prohibited. Voter protection is a value of our organization and we strongly believe all eligible voters in Kansas have a right to cast a ballot and have their ballot counted. House Bill 2067 does not advance the integrity of elections, but rather it would disenfranchise eligible voters in Kansas. The current budget shortfalls and resulting cuts to various departments and services make the cost fiscally irresponsible.

Governor Sam Brownback, in his State of the State speech proposed a \$750 million reduction in state spending to close the estimated \$500 million budget gap. Some of the cuts in his budget proposal are:

- Eliminate 8 state agencies.
- Eliminate more than 2,000 state employee positions.
- Reducing Base State Aid Per Pupil in the current year by \$75 and an additional cut of \$157 in the next fiscal year for a total of \$232 reduction in Base State Aid Per Pupil.
- Eliminate \$10.2 million of aid to mental health centers.
- Eliminate all state funding for Early Head Start Programs.

House Bill 2067 would bring an added cost to the state budget that did not previously exist. In addition to being a new cost to the state, the measure would put financial burdens on the counties who are also facing budget difficulties. According to Institute for Southern Studies the cost of a voter identification law in North Carolina, with approximately 6 million voters, is estimated at \$18 to \$25 million over 3 years. In 2010, Missouri estimated the cost at \$20 million over 3 years. Missouri has approximately 4 million voters.¹

According to the Kansas Secretary of State of July 19, 2010 the number of voters in Kansas is approximately 1.7 million.² When the population differences are considered the cost would be

¹ A February 2011 report issued by The Institute for Southern Studies. Accessed at [w](#) on February 3, 2011.

² A July 2010 Voter Registration report issued by the Kansas Secretary of State. Accessed on February 3, 2011.

a lower amount for Kansas, but would likely far exceed the estimated amount in the fiscal note prepared by the state budget director.

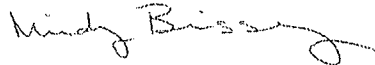
There are basic costs which come with instituting a new voting program that are not adequately addressed in the fiscal note for House Bill 2067 provided by the Kansas Director of the Budget. Two costs not included in the fiscal note were selected and are listed below:

One is the cost of issuing state photo identification to voters who do not have one. To avoid this being deemed a poll tax by requiring a voter to produce photo identification before being allowed to cast their ballot, it would be wise for the state to pick up the cost of issuing photo identification. In 2009, Missouri estimated this cost to the state to be \$3.4 million.³

Another necessary practice would be voter education to inform voters of the requirement to produce a photo identification when casting their ballot to ensure voters are not turned away and unable to cast a ballot on election day. In 2010, Missouri estimated the cost of television advertisements and other education outreach to cost \$16.9 million over 3 years. In North Carolina, the cost is estimated at \$14 million over 3 years.⁴

Again, the funds necessary for this bill would be better spent to keep more teachers in the classrooms, more funds for public education, or more services for the mentally ill. Kansas is facing a budget crisis and unemployment is high, legislators are focusing on cost measure which put up barriers to voting.

Respectfully Submitted,



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³ Ibid at 1

⁴ Missouri, Senate, *Voter Photo Identification SB 3 (2010)*. Accessed at www.senate.mo.gov on February 2, 2010.

Testimony by John F. Settich, Ph.D.
Delivered To the Committee on Elections
Kansas House of Representatives, Wednesday, February 12, 2011 at 9 a.m.
In Opposition to H.B. 2067

Good Morning, Ladies and Gentlemen.

I am John F. Settich, a voter in Atchison, Kansas. I appear today to express my opposition to the enactment of House Bill 2067.

I am a professor of political science and also a practitioner of the political arts.

Whether the game is politics or poker, the aim of cheating is to win.

The goal of any person who would engage in fraudulent registration or voter impersonation would be to affect the outcome of an election.

There is no evidence that a modern American election has been "stolen" by these types of voter fraud. House Bill 2067 is a solution in search of a problem.

My testimony and my conclusions are based both on disciplined academic research and on my personal history of more than 40 years activism in voter registration and get out the vote.

First: Uncontested elections cannot be stolen.

Fifty-one of the 125 members of this House of Representatives, including some of you on this committee were elected with 100% of the vote in November, 2010.

These 51 seats amount to 41% of the membership of the House.

My handout on the blue sheet shows the uncontested numbers of state representatives in Kansas since 2004.

Second, Elections near the top of the ticket: governor, U.S. House members just cannot be stolen with this type of fraud, the numbers are too big!

On the blue handout I detail the top of the ticket Republican winners in Kansas this past November. It would have taken nearly 50,000 fraudulent votes to have beaten new Congressman Yoder in the 3rd district. An army of 181,000 impersonators would have been necessary to defeat the new Republican Secretary of State! Governor Brownback had a 250 thousand plus vote margin in his victory.

These elections are completely out of reach for such vote fraud.

Third. If you plan to steal elections, then get a big prize. In my paper I argue that winning one or two state house seats would not be worth the effort. Go for majority control of one or both houses, especially just before the work begins on redistricting!

I developed a very detailed plan that the Kansas Democrats might have used to seize the majority from the Republicans. When the gap was just 15 seats, it would have been much easier.

I did not and do not advocate stealing elections, but I wanted to show how impossibly difficult it would be.

This is probably the best and most complete plan for fraudulent elections that you will ever see. Genuine conspirators tend not to write down their plans on paper. I encourage you all to read it, especially before you vote on HB 2067.

Fourth, it is much more difficult than you would imagine to target and identify elections that will be close enough to steal through fraud.

I tried and could not do it...

On the yellow handout page I have a chart that shows 13 Kansas House seats that Republican candidates won in 2006 by narrow margins, 3 percent or less. On the other side of the yellow page, I report the results for the districts of the members of the House Elections Committee.

Only 2 of the 13 showed real signs of vulnerability in 2004. Four had been uncontested Republican victories in 2004 and one other a Democratic victory with no opponent.

How could conspirators enroll fraudulent voters in House districts that they did not know would be within reach? And, why would they send hundreds of phony voters to polling places when the closeness of the race was unknown?

Fifth, it would require extraordinary organizational skills and lots and lots of money to perpetrate a fraud worth conducting.

In my plan, I list dozens of essential steps and I outline a very conservative budget for this conspiracy to install a new majority in the Kansas House.

Sixth, how would the conspirators avoid detection?

If 500 to 1,000 phony voters were mobilized, the secret of the conspiracy would not last long.

Finally, it has not be done!

The best known modern case spanned the period 1968 through 1982 in Kings County, NY (Brooklyn).

The grand jury in this case found evidence of fraudulent practices in two Congressional primary elections in 1976 and in 1982 as well as four primary elections in three state Assembly districts and three primary elections for State Senate and two elections for state (Democratic party) committee in two different districts.

Among all of these elections with alleged illegal practices, the grand jury only found that the fraud affected the outcome of one election for a member to the state Democratic party committee.

The Brooklyn irony is at the heart of my research: being successful at vote fraud is very, very difficult, even for those who allegedly engage regularly in this dark art.

It is one thing to cheat; it is quite another matter to win by means of cheating.

Any fool with a mask, a gun and a getaway plan can rob a convenience store, but the crime of stealing elections in this way would be much more complicated than a midnight stickup.

Here's My summary:

Cheating aims at winning. The big elections cannot be stolen with voter impersonation and fraudulent registration, the numbers are too daunting.

Many of the elections within reach (state House of Representatives) are uncontested and, therefore, cannot be stolen.

It is much too difficult to predict which contests (with manageable vote totals) might be close enough to steal with reasonable numbers of phony voters.

The skills and cash required are extraordinary.

There's no evidence that an election has been stolen by fraudulent voters in Kansas or anywhere else in modern times.

Kansas and America needs more active, attentive voters, not fewer.

The changes proposed in HB 2067 might reduce the number of lawful voters, thus diminishing our democracy. These changes would frustrate ordinary people and disenfranchise some of our most vulnerable neighbors.

Thank you.



The Roster of Republican Winners in the Kansas General Election of 2010

Office Contested	% of total vote by Winner	Vote Margin by the Winner	Total Votes for all candidates in this contest
U.S. Senator	71%	366,204	837,692
US Rep 1	74%	98,213	192,886
US Rep 2	63%	63,446	205,975
US Rep 3	58%	46,053	233,285
US Rep 4	58%	45,432	203,383
Governor	63%	260,594	838,790
Sec'y State	59%	180,999	829,513
Atty Gen'l	55%	109,157	834,704
Treasurer	59%	140,380	823,028
Cmsn Ins	100%	674,573	676,143

Vote Fraud Cannot Overturn House Seats That Are Unopposed !

In the November, 2010 general election for 125 members of Kansas House of Representatives, a total of 51 seats (41 % of the total) were uncontested. There were 37 Republicans who had no opponents and 14 Democrats who had no opposition. No amount of fraudulent registration or voter impersonation could have upset those 51 representatives.

In 2008, there were no contests in 47 seats (38% of the total: 25 GOP and 22 DEM). In 2006 there were no contests in 41 seats (33% of the House: 20 GOP and 21 DEM). In 2004, a whopping 57 seats had no contest (46% of all the House: 38 GOP and 19 DEM).

Is it possible to target Representative Districts to Capture by Fraud?

Could narrow GOP victories in 2006 mark these 13 districts as vulnerable to Fraud?

District	2010 Election Results				2008 Election Results				2006 Election Results				2004 Election Results				2002 Election Results		
	WINNER	MARGIN	% WIN		WINNER	MARGIN	% WIN		WINNER	MARGIN	% WIN		WINNER	MARGIN	% WIN		WINNER	MARGIN	% WIN
91	GOP	1,909	27.5%		GOP	2,121	23.1%		GOP	373	3%		GOP	2,505	14%		GOP	670	5%
9	GOP	5,934	100.0%		GOP	2,222	23.9%		GOP	355	2%		GOP	7,856	100%		GOP	5,875	100%
23	GOP	432	7.9%		DEM	1,149	13.3%		GOP	190	2%		GOP	565	3%		GOP	299	3%
24	DEM	1,219	17.7%		DEM	1,255	11.5%		GOP	592	2%		GOP	8,110	100%		GOP	5,909	100%
39	GOP	2,486	23.7%		GOP	380	2.3%		GOP	427	2%		GOP	10,900	100%		GOP	6,717	100%
65	GOP	636	15.3%		GOP	582	8.9%		GOP	142	2%		GOP	1,890	15%		GOP	1,276	15%
54	GOP	1,798	20.8%		GOP	1,803	15.3%		GOP	237	1%		GOP	3,081	14%		GOP	464	3%
59	GOP	3,502	47.7%		GOP	851	8.7%		GOP	219	1%		GOP	8,136	100%		GOP	5,653	100%
69	GOP	1,627	27.9%		GOP	452	5.9%		GOP	156	1%		GOP	33	< 1%		GOP	5,185	100%
81	GOP	2,996	40.3%		GOP	1,057	10.9%		GOP	102	1%		GOP	2,618	15%		GOP	1,467	11%
114	GOP	4,911	100.0%		GOP	7,601	100.0%		GOP	133	1%		GOP	1,206	6%		DEM	670	5%
72	GOP	1,747	24.5%		GOP	40	0.5%		GOP	34	< 1%		DEM	7,160	100%		DEM	463	3%
112	GOP	1,128	19.5%		GOP	480	6.1%		GOP	43	< 1%		GOP	607	4%		GOP	5,392	100%
Wins by < 250 votes = 0					Wins by < 250 votes = 1				Wins by < 250 votes = 9				Wins by < 250 votes = 1				Wins by < 250 votes = 0		

The Answer is NO! Only one of the 13 (district 69) was close in 2004, but it had been 100% for the GOP in 2002. The 2004 vote counts did not mark any of the other 12 districts as close enough to steal through fraud.

State representative districts are probably the most likely target for vote fraud, because the total vote count is so small. And, the number of precincts is small enough. However, the districts are drawn with careful attention to political features so theft through voter impersonation would be infeasible.

It is far more difficult than one would imagine to identify districts to target for theft by vote fraud!

Research by: John F. Settich, Ph.D. Atchison, Kansas 2011
presented to the Kansas House Committee on Elections 2 February 2011

House Members of the Elections Committee: Margins of Victories in each District

District	Representative	Party	2010	2008	2006	2004
9	Otto	GOP	100 %	62% (2,222)	52.4% (355)	100%
10	Gregory	GOP	53% (469)	DEM by 420	DEM by 2,389	DEM by 340
17	Meigs	GOP	63% (2,685)	GOP by 3,638	GOP by 5,638	GOP by 4,595
18	Rubin	GOP	59% (1,516)	DEM by 574	DEM by 159	GOP by 100%
26	Montgomery	GOP	GOP by 100%	GOP by 8,086	GOP by 2,940	GOP by 5,450
42	O'Brien	GOP	65% (2,585)	GOP by 2,448	GOP by 100%	GOP by 100%
47	Gonzalez	GOP	GOP by 2,313	GOP by 100%	GOP by 2,341	GOP by 100%
49	Schwab	GOP	71% (3,141)	60% (2,148)	GOP by 815	100%
53	Mah	DEM	61% (1,896)	66% (3,993)	64% (2,890)	51.4% (562)
56	Tietze	DEM	50.2% (268)	100%	59% (1,314)	DEM by 1,646
62	Garber	GOP	54% (556)	DEM by 1,371	DEM by 545	DEM by 826
89	McCray-Miller	DEM	100%	100%	100%	67% (2,214)
100	Goico	GOP	100%	68% (4,144)	69% (2,823)	100%

Specifying a Model of Political Infeasibility for
Voter Fraud in State Representative Elections

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Abstract

I present an analytical model that challenges the assumptions underlying recent legislative activism that has created what I describe as an excessive system of protection against voter fraud. The data set includes all 3,858 state representative contests in 38 states in the general election of 2006. Partisan control of state legislatures yields one of the most valued prizes in politics: the ability to re-district both the state legislature itself and the U.S. House of Representatives. This model shows that in order fraudulently to elect a single member of a state house of representatives there must be both an elaborate conspiracy and a deep trough of corruption. I argue that it is essentially impossible to create such a conspiracy or to manipulate such a thoroughly corrupt system in the dozens of precincts necessary to create a winning majority for a single house member.

Prepared for presentation at the 2009 annual meeting of the Midwest Political Science Association, April 2-5, 2009, Chicago, IL.

Introduction

"Both Republicans and Democrats are corrupt. The motto of the Democratic Party is: 'Anything to get in.' The motto of the Republican Party is: 'Anything to stay in.'"

William Randolph Hearst, American Publisher, April, 1907

There are three plausible explanations for voter fraud in America: mischief, mistake and malice. Some persons may choose to impersonate a voter with some mischievous intent, never expecting to affect the outcome of the election. Others make the mistake that several thousand Florida voters seemed to have made when they intended to vote for Al Gore in the presidential contest of 2000 and voted instead for Pat Buchanan. The most serious instance of fraud would be the voter who would enter a conspiracy with others to upset the ordinary democratic order by systematically denying a lawfully cast majority of votes to one candidate or by fraudulently delivering votes to other candidates not lawfully earned by normal processes. The mischievous fraud is a kind of petty crime against the democracy. I argue that the mistaken vote is the product of misinformed ignorance and not damaging to the system because these tend to be randomly distributed and not determinative of any election outcome. Malicious fraud represents a danger to the democracy, if implemented. Those who seek to create a fraudulent voting conspiracy risk failure, detection and criminal prosecution because such an enterprise must include many individuals to deliver enough votes to affect the outcome of the election

I hypothesize that perpetrating a successful fraud is so complex, absent corrupt collaboration with election officials, that it could not and, apparently, has not been achieved in any federal election through fraudulent registration and voting by unqualified voters in modern American history. Therefore, my argument continues, recent state legislation that seeks to impose stringent controls on voter identification, constitutes an impairment on the American democratic election process.

In the Spring, 2008 seminar I offered an upper division special topics course on Election Law and Regulation; seven students enrolled, all political science majors or minors. The students reviewed all state house elections in 2004 and in 2006 in our original sample of 10 states. Our first class session was the day after the Supreme Court heard oral arguments in the cases that animated the research. The Court did us the courtesy of issuing its written opinion essentially on the last class day of our semester.

I would like to acknowledge the contributions of Jimelle Austin, Justin Carroll, Joan Cinotto, Luke Hendrixson, Stash Holmes, Tara McLanhan and Andrew Wales, all undergraduates at Benedictine College who enrolled in this special topics research course in the Spring, 2008 semester during which this project began.

Supreme Court and State Legislatures

On April 28, 2008 the Supreme Court of the United States announced its opinion in the case of *Crawford, et al. v. Marion County Election Board, et al.* (No. 07-21) and a companion case, *Indiana Democratic Party, et al. v. Rokita, Secretary of State of Indiana, et al.* By a margin of 6-3 the majority of the Court upheld an Indiana statute (SEA, 2005) that requires citizens voting in person to present government-issued identification cards. Justice Stevens wrote for the majority. Justice Souter and Justice Ginsburg joined in a lengthy dissent to the majority. Justice Breyer dissented separately.

On decision day, the Washington Post (Barnes, 2008) summarized the conflict in *Crawford* in these terms: "The Supreme Court ruled today that states may require voters to present photo identification before casting ballots, upholding a Republican-backed measure that proponents say combats voter fraud and opponents believe discourages voter participation." Among the states with some requirement for voter identification, Indiana's was the most restrictive at the time of the decision (Ibid).

The Help America Vote Act (Public Law 107-252) mandated that all states require identification from first-time voters who registered by mail and did not provide verified identification with their mailed application. (National Conference of State Legislatures, 2008). Shortly before the November, 2008 general election, the National Conference of State Legislatures posted on its web site a summary of which states had enacted statutes that had "broader voter identification requirements than what HAVA mandates" (Ibid) Appendix A summarizes that NCSL posting. However, this appendix does not detail the methods employed by each of the states or the status of those laws. Some had been toughened since enactment, others suspended or amended by litigation. The NCSL report provides that complete summary on its website.

This research does not set out to evaluate the direct effects of how these state laws may either impede democratic participation or protect from fraudulent patterns of voter impersonation. I do offer an analysis and a model that attempts to fill the void of evidence with a logical model. Proponents of restrictive voter identification laws have not established that voter impersonation fraud is now widespread. Theirs is a conditional argument in which they portray such abuses as potential assaults on the integrity of American elections.

One underlying oddity of the recent Supreme Court decision is that it stipulates that neither the petitioners nor the respondents created any empirical evidence in the record that showed that a single instance in person voter impersonation at a polling place has actually occurred in Indiana (*Crawford, op. cit.*). Nor did either side create a credible record that a single individual resident of Indiana had been denied the opportunity to cast a ballot in person because of the requirement to produce a photographic

identification card. This latter observation is true, in part, because 2008 would be the first election in which this Indiana law would be enforced.

A Brief Review of American Vote Fraud and Protections

The Constitution (Article I, § 4; Amendment X; *inter alia*.) provides roles for both the states and the central government in how American elections will be conducted. The history of election laws expands and contracts with events. In the period of Reconstruction, the Congress passed the Enforcement Acts (Donsanto and Simmons, 2007) and later repealed them in 1894. Civil rights legislation in the 1960s provided specific protections for voters from abuses by state election officials. The modern criminal federal statutes (42 U.S.C. §§ 1973i(c), 1973i(e), 1973gg-10) identify violations connected with false voter registration, multiple voting and fraudulent elections when federal candidates appear on the ballot (*Ibid*).

In May, 2007 the U.S. Department of Justice issued the 7th edition of its Federal Prosecution of Election Offenses (Donsanto, *op. cit.*). This 326-page volume follows the 6th edition, published in 1995. The authors describe it as a handbook to guide U.S. Attorneys in prosecutions with a somewhat puzzlingly admonition. U.S. Attorneys and field offices of the Federal Bureau of Investigation may only conduct preliminary investigations into election fraud. However, consultation with the Public Integrity Section of the U.S. Department of Justice in Washington, D.C. is required before any such federal officials may file charges or present evidence to a grand jury. (*Ibid*, p 17 *et seq.*) A cynical view might be that such required consultation would be a useful tool to selectively enforce these offenses for full political advantage. A more generous view would be that these offenses are so inimical to the democracy that their prosecution should be centralized and coordinated to assure maximum enforcement effect. Donsanto and Simmons (*Ibid*, pp 2-5) describe these types of federal election crimes: election fraud; patronage crimes; campaign finance crimes and civil rights crimes.

The offenses described hereafter in this paper may be prosecuted under one or more of the sections of the Federal Code cited above, so long as a federal candidate is on the ballot. Fraudulent registration or voting, for example, may be prosecuted under the National Voter Registration Act (so-called Motor Voter, 42 U.S.C. §§ 1973gg-10) as a felony with a maximum term of imprisonment of five years. These offenses typically are also subject to jurisdiction of election laws in the states. However, both state and federal prosecutors have limited resources to conduct such investigations and to successfully prosecute such offenders.

There is an old aphorism that seems to fit: "The plural of anecdote is not data." There are periodic media reports and some from apparently authoritative organizations as well (von Spakovsky, 2008; Talley, 2007; and Langholz, 2008) that allege vote fraud, especially in false registration and voter impersonation. A recent and high profile case occurred in the 1997 Miami mayoral primary where vote fraud was alleged and

conspirators were convicted. (Minnite and Callahan, 2003) As a municipal election, those convictions were conducted under the laws of the state of Florida.

Another historic and often-cited case of voter impersonation and fraudulent registration (von Spakovsky, op. cit.) spanned the period 1968 through 1982 in Kings County, NY (Brooklyn). The grand jury in this case found evidence (NY Supreme Court, 1984) of fraudulent practices in two Congressional primary elections in 1976 and in 1982 as well as four primary elections in three state Assembly districts and three primary elections for State Senate and two elections for state (Democratic party) committee in two different districts. Among all of these elections with alleged illegal practices, the grand jury only found that the fraud affected the outcome of one election for a member to the state Democratic party committee. The Brooklyn irony is at the heart of this research paper: being successful at vote fraud is very, very difficult, even for those who allegedly engage regularly in this dark art. It is one thing to cheat; it is quite another matter to win by means of cheating.

Another body of evidence suggests that there are remarkably few convictions for such offenses and very few charges filed either at the state or federal level (EAC, 2007; Minnite and Callahan, 2003; Hershey, 2009; Davidson, 2009). It may be that there are few such documented criminal cases of elections stolen with fraudulent votes either because prosecutors are inattentive and ineffective or it may be that there are very few such instances.

The Search for a Prize Worth Stealing and A Research Approach

The question remains: how could conspirators engineer a successfully fraudulent election and what prize would be worth pursuing? U.S. Senate contests involve millions of votes, depending on the size of the state. Elections for the U.S. House of Representatives typically involve hundreds of thousands of votes in general elections. Governors, mayors of big cities, constitutional officers of states and even state senate elections turn on thousands of votes. Stealing one of these elections necessarily would involve thousands of fraudulent voters. The best prize may be the most accessible one, in terms of votes cast in each election: seats in state houses of representatives.

Partisan control of state legislatures offers America's two political parties one of the grandest of all prizes: the ability to draw district lines for both the legislature and of the apportioned seats in the U.S. House of Representatives. Other executive offices, such as governor and attorney general are important, but as statewide elections, there are fewer opportunities to commit vote fraud successfully. Similarly, county and municipal elections usually involve more precincts and more total votes cast than those in state legislative districts. With fewer votes in a state legislative race, there is theoretically a higher likelihood that fraud could affect the outcome. For these two important reasons, I chose state house of representative district elections as our unit of analysis. Each of these states in our sample uses the single-member district format.

I chose the general election of 2006 for two reasons: first, all of the data were available when I began the project and second, as a non-presidential election year, it would offer data unaffected by the large national phenomena that often mask trends in "down ballot" races.

Hypotheses and the System of Categories

H₁ Most elections for seats in the state house of representatives cannot be stolen through voter fraud because they are unevenly competitive.

In order to test this hypothesis, I created four categories to analyze elections in state houses of representatives. I reasoned that these categories would enable us to estimate the likelihood of creating a successful fraud for state representative elections. The data in Table 1 below represent Indiana state house elections in 2006. Because Indiana has 100 seats in the House, the raw numbers also express the percentages. Indiana was part of our original sample, in part, because it was the state with the stringent voter identification law tested by the Supreme Court of the United States.

Table 1. Indiana House of Representative General Elections in 2006

Indiana State House General Elections in 2006	Democratic	Republican	Total	Estimated Likelihood Of Winning Through Fraud
Category 1: Uncontested	19	11	30	Impossible
Category 2: Incumbent in 2004 Elected with a Margin of $\geq 10\%$	20	21	41	Very difficult
Category 3: Incumbent in 2004 Elected with a Margin of $< 10\%$	12	6	18	Possible
Category 4: Open Seat in 2006	4	7	11	Best chance
TOTAL	55	45	100	

The sum of categories 1 and 2 for Indiana is 71 seats. These, I suggest, would be impossible or difficult to steal through voter fraud. Our analysis included a comparison of the names of the candidates between 2004 and 2006 so that we could validate whether incumbents were defending their seats and, also, whether the 2006 election was an open seat contest. This model proposes that only 29 seats would be vulnerable to theft by fraud. Stealing a seat from an incumbent whose margin was 7, 8 or 9 percent in 2004 (Category 3) would probably be difficult, but conceivable. My analysis assumes that all candidates have average funding and similar qualifications and no scandals or advantages that might create a significant political imbalance.

Thirty seats in the Indiana House of Representatives were uncontested in 2006. Nineteen Democrats and 11 Republicans were elected without a challenge. There are several obvious explanations for this phenomenon. First, the districts might be drawn with such an overwhelming partisan advantage that no challenger could hope to succeed. Second, there might be an organic weakness in the ability of both state party organizations to recruit and fund candidates for these offices. Third, there might be a corrupt bargain between the party organizations to allow some seats on both sides to go without challenges for the sake of preserving resources. (See Future Research)

Our original sample was somewhat difficult to gather and manage, relying on a manual, item-by-item examination of hundreds of elections for two election cycles. The students calculated margins and compiled the data in the four categories. Later I acquired the data set from The Almanac of State Legislative Elections 3rd edition (Lilley et al., 2008). These data, in Excel™ format, enabled me to examine trends in all states for the 2006 legislative general elections. This data set, however, did not have the names of the candidates, so my system of categories shrank to three, since I could not identify which were open seat elections.

Despite the completeness of the Almanac data set, not all states fit into this analysis. I eliminated Nebraska because of its unicameral form. States that do not have single-member districts in their lower house also fell out of the sample. Those are: Arizona, Maryland, New Hampshire, New Jersey, North Dakota, South Dakota, Vermont, Washington and West Virginia. Essentially all of Louisiana's data was missing; it too was eliminated. Finally, Virginia held its election in 2005, thus it was not included because it fell out of the time frame of November, 2006. In Oklahoma only 48 of its 99 seats were elected in 2006. All of those data remained in the analysis, as did the partial data from Florida where 67 of the 120 seats were on the 2006 general election ballot.

The first finding from this larger data set of 38 states seems to validate my first hypothesis. In 2006 no voter impersonation fraud could have stolen these uncontested elections. Table 2 shows that 1,340 state house elections in 33 states were uncontested in 2006, a full 38% of the 3,464 seats in these states. Five other states (Hawaii, Oklahoma, Oregon, New York and Minnesota) had no uncontested winners.

Table 2. States with Uncontested Elections in 2006 for State Representative

State	Total Seats	Democrats	Republicans	TOTAL	% All State Representatives
GA	180	58	71	129	72%
SC	124	35	53	88	71%
MA	160	94	13	107	67%
WY	60	8	29	37	62%
AL	105	36	24	60	57%
MS	122	49	20	69	57%
KY	100	34	22	56	56%
NM	70	29	10	39	56%
NC	120	32	31	63	53%
IL	118	34	25	59	50%
RI	75	31	6	37	49%
AR	100	30	19	49	49%
TN	99	24	24	48	48%
ID	70	8	23	31	44%
DE	41	9	7	16	39%
WI	99	24	13	37	37%
IN	100	17	16	33	33%
PA	203	33	33	66	33%
KS	125	21	19	40	32%
MO	163	35	17	52	32%
AK	40	6	6	12	30%
NV	42	8	3	11	26%
TX	150	21	17	38	25%
FL*	67	5	10	15	22%
CT	151	17	15	32	21%
IA	100	11	10	21	21%
CO	65	11	2	13	20%
UT	75	1	11	12	16%
MT	100	11	4	15	15%
OH	99	4	6	10	10%
CA	80	4	0	4	5%
ME	151	4	0	4	3%
MI	110	2	0	2	2%
TOTAL	3,464	746	559	1,305	
* Florida, only 67 of 120 House seats were up for election in 2006					

Considering these data in Table 2, a theorist might ask which holds the greatest potential danger to the vitality of a democratic republic: A democracy in which more than 700 state representatives of both parties in the first 10 states shown above are elected without an opponent or one in which a fraction of the electorate fails to produce a government issued identification card at the polling place?

Election margins of 10% or more are generally regarded as convincing. Table 3 shows that nearly 1,000 state representatives in some of America's most populous states crushed their opposition in the general election of 2006. In California, for example, the vote advantage for winners with more than 10% of the total vote ranged between 20,000 and 45,000. No voter impersonation fraud could override such margins. In the much smaller state of Maine such 10% and greater victories converted to 700 to 1,500 vote margins. One hundred fraudulent voters, each voting seven times in a single state house district would be needed to overcome even the narrowest margin.

Table 3. 2006 General Election Results Where Contested State Representative Seats Yielded the Winners Margins of 10% or more

State	Seats	Democrats	Republicans	Total	% All
CA	80	39	21	60	75%
MI	110	47	26	73	66%
OR	60	23	12	35	58%
CT	151	67	21	88	58%
UT	75	8	35	43	57%
OH	99	33	17	50	51%
MN	134	49	18	67	50%
MT	100	18	28	46	46%
IA	100	31	13	44	44%
PA	203	53	34	87	43%
NY	150	63	0	63	42%
CO	65	14	13	27	42%
ME	151	43	17	60	40%
IL	118	27	17	44	37%
KS	125	13	33	46	37%
MO	163	23	36	59	36%
IN	100	22	13	35	35%
TX	150	31	21	52	35%
TOTAL	2,134	604	375	979	

Table 3 is slightly truncated. It only reports those states where 35% or more of all the state house seats were carried by margins of 10% or more in 2006. See Appendix B for all values in Category 2. The data from category 1 and 2 account for 71% (2,756) of all 3,858 state house seats elected in the sample of 38 states. This paper proposes, in a detailed plan that follows, that winning any of these elections cannot be achieved through voter impersonation fraud because of the sheer scale of vote margins to overcome.

Success in a fraudulent election will most likely depend on mobilizing such faux voters in political areas where a relatively small number of votes may change the result of an election. Category 3 in my analysis identifies such electoral contests.

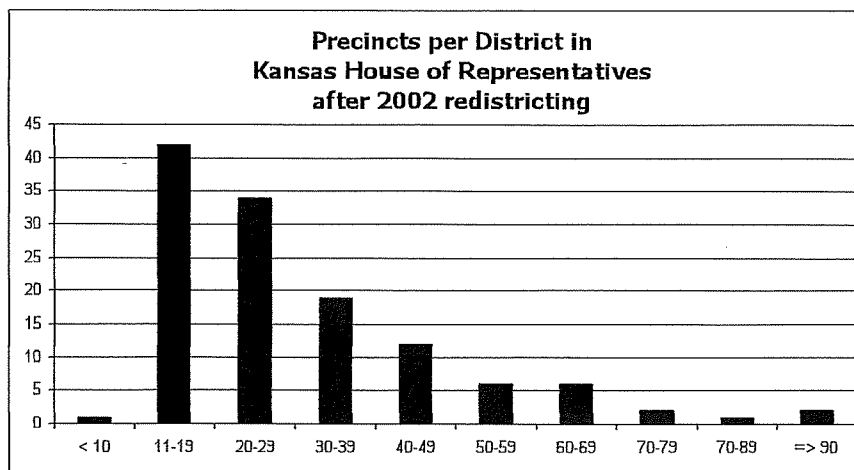
H₂ Seats in the state house of representatives can best be stolen through voter fraud in districts where the margins of victory have historically been the most narrow.

Those seats in category 3 represent just 29% (1,102 seats) of all of the 3,858 seats in the 38 states in this sample. See Appendix C. More than one-half (58%) of all the seats in the New York Assembly fell into category 3 (margins of victory less than 10% in 2006). New York has a vigorous multi-party system that resulted in 35 plurality victories in 2006, most (27) of those were Republican wins. The New York Democrats shut out the Republicans in Category 2 victories with 63 wins by margins of greater than 10% while the Republicans had none of that scale. Those narrow Republican Category 3 victories fell generally in the range of 1,000 to 5,000 votes. It may be mathematically possible to steal such elections in New York, with a robust conspiracy, although Brooklyn Democrats failed to do so during nearly 15 years of trying.

Close elections may be subject to theft by vote fraud, if they are known in advance to likely be separated by a few hundred votes. That is a mighty and apparently unsupportable assumption as I show later in my attempt to target Kansas districts to steal. Winning by corrupt voting depends on manipulating narrow margins. This starts at the level of precincts.

Precincts are the smallest political units in America. County election officers and executives (commissioners) establish the boundaries of precincts, usually including equivalent numbers of registered voters. These tend to be rather constant over long timeframes, changing only when demography demands because of population growth or decline in areas within counties. Many counties aggregate precincts into larger bundles, such as wards or townships. Using the state of Kansas as an example (Chart 1, below)), there are 3,777 precincts included in the 125 state representative districts (Galligan, 2008). The mean number of precincts is 30; the median is 24 per district.

Chart 1. Number of Precincts in Kansas State House districts



In order to validate hypothesis 2, I must find a set of narrowly contested state house districts with as few precincts as possible, so that a successful fraud might achieve victories in those districts. I have chosen Kansas because it does not have an onerous identification card requirement and because of my familiarity with its political dynamics.

Targeting the Kansas State House Districts for the Fraud: A logical proof and a predictive challenge

One would assume that it would be rather straightforward to choose which districts should be targeted for the 2010 fraud. There are many factors that create close elections, only a few of which are predictable. The thirteen state house districts shown in Table 4. below are those that Kansas Republicans won in 2006 by the narrowest of margins, ranging from less than 1% to only 3%.

Table 4. Comparing vulnerable GOP winners in 2006 with past outcomes

GOP winners in 2006			Same District in 2004			Same District in 2002		
District	Margin '06	% Win	Winner	Margin '04	% Win	Winner	Margin '02	% Win
91	373	3%	REP	2,505	14.0%	REP	670	5.0%
9	355	2%	REP	7,856	100.0%	REP	5,875	100.0%
23	190	2%	REP	565	3.0%	REP	299	3.0%
24	592	2%	REP	8,110	100.0%	REP	5,909	100.0%
39	427	2%	REP	10,900	100.0%	REP	6,717	100.0%
65	142	2%	REP	1,890	15.0%	REP	1,276	15.0%
54	237	1%	REP	3,081	14.0%	REP	464	3.0%
59	219	1%	REP	8,136	100.0%	REP	5,653	100.0%
69	156	1%	REP	33	< 1%	REP	5,185	100.0%
81	102	1%	REP	2,618	15.0%	REP	1,467	11.0%
114	133	1%	REP	1,206	6.0%	DEM	670	5.0%
72	34	< 1%	DEM	7,160	100.0%	DEM	463	3.0%
112	43	< 1%	REP	607	4.0%	REP	5,392	100.0%
9 of 13 victories by < 250 votes			1 of 12 victories by < 250 votes			0 of 11 victories by < 250 votes		

The 2006 results for these 13 districts show Republican vulnerabilities, since their victory margins were so narrow. However, examining these same 13 districts in the preceding 2004 election shows that only one, the 69th district, was very close, just 33 votes. In that year four of those were uncontested Republican victories and four others were 14-15% wins. Another four were in the range of 3-6%, but the vote margins in those Republican victories were between 565 and 1,206 votes. One of these potential targets in 2010 was an uncontested Democratic win that turned into a Republican win in 2006.

When appraising these districts as potential fraud targets in 2010, they seem less attractive in the off-year 2002 elections when none of the 11 Republican victories that year were by margins of less than 250 votes. The 2006 thirteen districts may be targets for the 2010 vote fraud, but the margins needed to win may be beyond the ability of the conspiracy to deliver. The process of targeting must be more complicated than a simple examination of raw votes and winning margins.

Further complicating this process of targeting in the 2010 elections, the Kansas Democrats must hold the narrow victories they achieved in 2008 and in 2006, presumably without the benefit of the fraudulent voters. It seems rather clear that a conspiracy should not be wasted in the defense of incumbent seats. Yet, in that 2006 election, there were five narrow victories for the Democratic candidates, each with a margin of less than 250 votes. The actual margins of victory in those five seats were: 3, 50, 159, 164 and 189 votes. Four of those wins came at the expense of Republican incumbents. The fifth was one that had previously been held by an uncontested Democrat whose 2006 defense victory margin was just 189 votes.

Therefore, it seems that identifying 20 house seats for fraud-induced Democratic victories in 2010 would probably be selected with an elaborate calculus that may include the following terms, each weighted, as appropriate.

1. An open seat without an incumbent Republican defender may be a very good target.
2. Some proxy indicator for Democratic voting tendencies, such as ballots cast for President Obama in November, 2008.
3. Districts with the lowest density of identified Republican voters, outnumbered by Democrats and Unaffiliated voters, those without a history of voting in primary elections where they are "branded" by Kansas election law with the party whose ballot they vote.
4. Districts with a past history of electing a Democratic member to the Kansas House of Representatives.
5. Districts with known, significant demographic changes, such as recent and large in-migration of likely Democratic voters, such as Latinos.
6. Districts in which the rivalry between conservative and moderate Republicans typically creates spirited and divisive primary election contests, especially for the State House seats.
7. Districts in which Republican incumbents are known or suspected weak candidates without ample measures of achievement, charisma or financing.
8. Districts in which a popular Democratic personality, such as a successful mayor or seasoned and highly visible public figure, may be available to make the race for the State House.

If a conspiracy is to succeed, it depends on the very difficult proposition that the leadership team will choose 20 districts where the margins will be narrow enough to be

subject to winning through this rather limited infusion of fraudulent votes. Assuming an average, yet ambitious plan, of each faux voter casting 12 ballots in this election, the 500 enlisted voters will only yield 6,000 votes, spread into 20 districts at an average of 300 votes per district.

Furthermore, even well designed voter preference polls would not help in this targeting, because the fraudulent voters must be registered into certain precincts and legislative districts. They cannot be mobilized late in the process, after the registration deadline, into areas that seem competitive only late in the campaign. Additionally, such preference polls are expensive tools that would drive the cost of the conspiracy much higher, even if reliable pollsters were available.

This analysis calls the fraud infeasible, in large part, because of the near impossibility to identify 20 districts where such few votes will create winning margins for the conspiracy. Close elections are apparent in a post election analysis, but rarely so evident in advance. Nonetheless, what follows is my proposed plan for this fraud, assuming that Hypothesis 2 can be satisfied.

The Plan for Creating a New Democratic Majority in the Kansas House of Representatives in the General Election of November, 2010 through Fraudulent Voter Registration and Illegal Voter Impersonation

Overview

In the general election of November, 2008, the Republican Party held its majority in the Kansas House of Representatives. The legislators sworn in January, 2009 were 77 Republicans in number and only 48 elected in the Democratic Party. That is a 15-member margin for the Republicans (62% Republicans and 38% Democrats). The Kansas House of Representatives consists of 125 members. A simple majority is 63 members.

This section is part of a paper that posits the political infeasibility of voter fraud in state representative elections. The purpose of this part is to outline the details of the fraud that would be necessary to restore Democrats to the political majority in the Kansas House of Representatives. Obviously, there are many ways for the Democratic Party in Kansas to achieve this goal legally, with the consent of Kansas voters. This paper is not a call to action that proposes vote fraud. Rather, the author seeks to demonstrate the practical impossibility of successfully creating, executing and achieving a complicated fraud with a politically vital purpose, i.e. placing the minority party into majority control of a state house of representatives.

The Kansas legislature is as good an example as a researcher might choose. The Kansas legislative districts, as in most states, are drawn by the political majority with an eye toward preservation of their political species, i.e. Republican partisans. The

historic norm has been to re-draw district lines after the national decennial census and reapportionment of the U.S. House of Representatives. This model of fraud ripens at just the right time (November, 2010) so that Democrats might restore district lines that would favor their election for the ten years that follow. A central theme of this paper is that every vote fraud ought to have a valuable goal. One would not reasonably risk imprisonment after conviction for vote fraud for immaterial aims. In the larger political scheme winning one state representative election might be satisfying, but if that purloined victory only changes the partisanship of one vote out of 125 in a legislative body, the political gain is very slight.

Reversing the political polarity of the Kansas House of Representatives would be a major achievement, whether lawfully or fraudulently attained. This model outlines a plan for conspirators who seek Democratic victories. This paper assumes that neither Democrats nor Republicans are more organically inclined toward fraud than the other. The political identity of the present majority in the Kansas House is merely a fact.

Assumptions and Conditions Precedent to the Conspiracy

This model for massive vote fraud depends on a set of assumptions and conditions precedent. The fraud outline that follows makes brief citation of some of these. A further exposition of these assumptions and conditions will contribute context to the fraud model.

1. **The goal is worth having.** The majority party has all of the natural advantages of winning roll call votes, appointing chairmen and members to committees and drawing district lines that favor their own. Also, these victories may advance party aims in electing more constitutional officers or in creating a stronger partnership with a governor of the same party.
2. **The goal cannot be achieved through lawful means.** Kansas Democrats have recruited candidates, financed state House campaigns and failed to gain the majority they seek. The party preferences of voters are not likely to change spontaneously or even because of persuasive campaign appeals. Politically rigid district lines defend Republican legislators and frustrate Democratic victories.
3. **Incumbent Democratic Party leadership would neither approve nor perpetrate such fraud.** Political party leaders have long-term investments in their careers. They are unlikely to choose directly such unlawful options because if their roles were detected, their careers would probably end ignominiously. Additionally, discovery of criminality would inevitably hurt other Democrats now holding or soon seeking higher office.
4. **Plausible deniability is possible.** Party leaders and the actual candidate-beneficiaries should be insulated from knowledge about or participation in the fraud

plan. If this can be achieved, then their political futures can survive fraudulent election or disclosure of the fraud plan. If it is impossible to create and maintain such a firewall of ignorance and isolation, then a cohort of future political officeholders will be tainted and discharged from the political system.

5. **The corps of the conspiracy will be discreet.** When one person holds a secret, it may remain unknown to others. When two or more persons know such forbidden facts, the chances for preserving the secret diminish. The more numerous the cognoscenti, the more certain that the conspiracy will be uncovered. This fraud depends necessarily on recruitment and mobilization of hundreds of persons. The risk of discovery will be profound, even if each fraudulent voter is uninformed of the architects and principal builders of the fraud. Prosecutors historically unravel conspiracies by working their way up the chain of culpability through plea bargains with low-level operatives.
6. **The conspirators target the proper districts to perpetrate the fraud.** As this paper asserts elsewhere, the research appeal of state house district contests is their relatively small number of precincts and votes cast. In order to achieve a net gain of 15 seats in the Kansas House of Representatives, the conspirators must choose their targeted legislative districts very, very carefully. They will not want to choose a district they might win with a lawful, effective campaign. They want to select a district with high predictability in its voting patterns and turnout. The conspirators should also choose districts where the fewest fraudulent votes will have the biggest impact on the outcome: choose a district where 400 votes will bring victory; avoid those that would require 4,000 or more votes. These districts, to the extent possible, should also be geographically manageable. Many districts include several counties with small populations and distances measured in one hundred or more miles within the district borders. Fraud in those districts would be more difficult to execute successfully.
7. **The conspirators have the requisite skills to succeed.** This criminal enterprise requires extraordinarily sophisticated knowledge about election laws, political geography and processes and logistics sufficient to succeed. Any fool with a mask, a gun and a getaway plan can rob a convenience store, but this vote crime will be much more complicated than a midnight stickup. The team at the top of the conspiracy would likely require a group of persons with differentiated talents that are complementary. The conspiracy requires the creation of false identities, the production of fraudulent documents, the training of the faux voters, the supervision and transportation and payment of the corps of crooked voters and the maintenance of a reporting and communications system that will be encoded and protected.
8. **The conspirators are motivated to succeed.** Assuming, as this paper does, that the direct beneficiaries (minority political party or the candidates elected

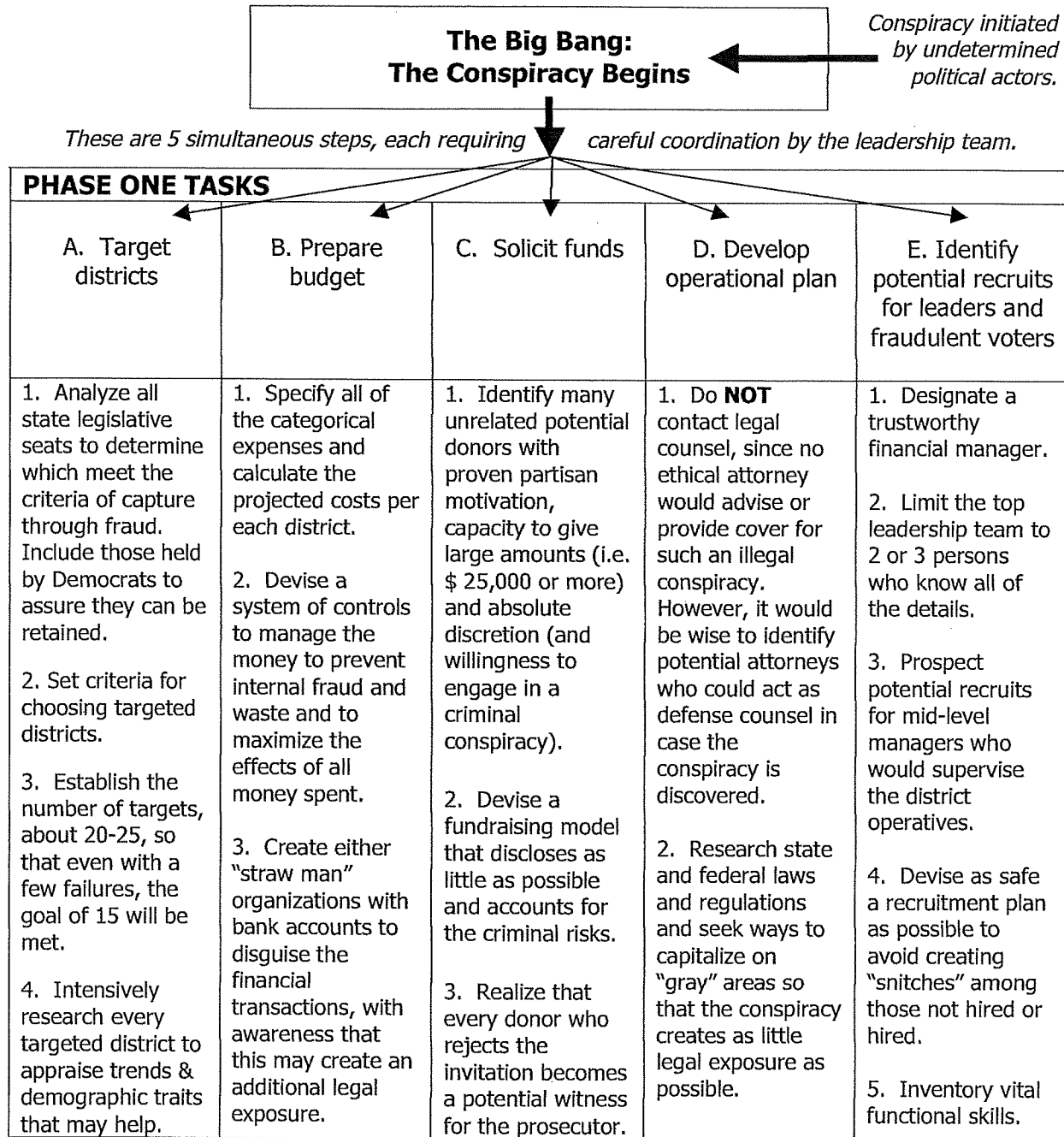
through the fraud) have not engineered or approved the plan, there must be someone who wants this plan to succeed. The list of capable suspects to perpetrate the fraud is rather short. Raw political operatives who run campaigns often make lots of money with risk only to their reputation for winning, rather than the threat of imprisonment. Unethical operatives might take work for hire, but they would not likely initiate the conspiracy. One or more interest groups might combine to create the conspiracy, but the risks are probably too great, especially considering that the goal depends on success in multiple simultaneous events. A political vendetta might explain the motivation of the chief conspirator. A person with "nothing to lose" might create a conspiracy of this sort. However, in a late or post career phase of life, this person probably failed in elections or other public events, thus rendering him unlikely to be successful in a complicated, hidden scheme. The candidates are few for conspirator-in-charge.

9. There are resources available to underwrite the fraud. This is a very, very big problem for potential conspirators. During political seasons money becomes committed early and is usually scarce throughout. In order to finance this fraud, conservative estimates range from \$ 500,000 to \$ 2,000,000. Even with mediocre state campaign finance laws, it would be impossible to hide such expenditures in lawful campaign spending. Therefore, the entire revenue and expenditures would have to be hidden. Except for funds from illegal enterprises, the author cannot identify donors who could create this large flood of money. To maintain the security of the conspiracy it would be best to have a few donors with large amounts. That condition makes the funding doubly difficult. Another resource with obvious impact is time. The duration required for a successful conspiracy and the synchronized execution of dozens of steps complicate this fraud. The author acknowledges, but does not further describe the significant impact of this scarce resource.

10. The conspiracy would evade discovery by the media, law enforcement and political opponents. This is an era in which whispers and malapropisms become headline news in minutes. All of these actors (media, law enforcement and political opponents) tend to be attentive to activities that are out of the norm. Nonetheless, the conspirators actually have a slight advantage in this circumstance. State legislative electoral contests rarely attract much media attention. Nor, would law enforcement ever imagine that someone would be so bold as to attempt to win 15-20 state legislative seats on a single day. Yet, if the conspiracy were discovered after the election, the candidate-beneficiaries would likely be denied their seats in the Kansas House of Representatives. Therefore, the temporary advantage for the conspirators would dissolve disastrously after the fact.

The Details of the Conspiracy

The outline that follows attempts to identify the milestones and critical path that the conspirators would take to create a new political majority in the Kansas House of Representatives. The foregoing section obviates the need for rationale expressed at each step below. Yet, at some points, the author adds observations that emphasize the criticality of the assumptions and conditions precedent. And, in other places, the author offers commentary related to the feasibility of the individual step on the path.



PHASE ONE TASKS (continued)				
A. Target districts	B. Prepare budget	C. Solicit funds	D. Develop operational plan	E. Identify potential recruits for leaders and fraudulent voters
<p>5. Create a data base, secure web site or other electronic means to transmit and report information.</p> <p>6. Secure computerized maps of districts and precincts and specify needed vote counts in every precinct in the targeted districts.</p> <p>7. Secure official computer file of registered voters.</p> <p>8. Develop likely addresses for fraudulent voters, such as high density apartments or college campuses.</p> <p>9. Select targeted precincts with reasonable proximity to each.</p> <p>10. Assess historic and likely voter turnout efforts by regular party organizations and candidates to learn how their efforts might "provide cover" for the fraudulent voters.</p>	<p>4. Prepare contingent budgets in the event that fundraising falls short of idealized revenue.</p> <p>5. Establish credit or payment terms with key vendors.</p> <p>6. Identify alternative sources for key products and services, such as identification cards and other vital documents.</p> <p>7. Conduct preliminary "market analysis" to calculate how much it will cost to secure the services of each fraudulent voter. That is to say: how little can you pay each person to engage in this conspiracy and to vote on election day multiple times as directed with the false identities provided.</p> <p>8. Determine the best method for safeguarding the anticipated large flow of cash, i.e. safe or lock box.</p>	<p>4. This plan should not be launched until it is clear that donations will yield sufficient funds to execute all phases of the plan. Therefore, at the earliest possible moment, donations should be solicited and received. The launch should probably occur when about one-half of the budgeted funds are in hand and the balance is relatively assured. The time frame for this is critical because of the time that will be needed for all other steps in the plan.</p> <p>5. Ask & receive.</p> <p>6. Identify "crisis donors" with the capacity to give a second time or to give for the first time late in the plan, in the event that cash falls short after implementation has begun.</p> <p>7. Ask again.</p>	<p>3. Create a management security system to maintain a firewall among the highest levels of the conspiracy and among district team leaders. They should not know each other. The "middle management" layer should operate on a "need to know basis" only.</p> <p>4. Create a complex and dense firewall between the conspirators and the candidates and the Party so that they will have plausible deniability in case the conspiracy is uncovered.</p> <p>5. Develop a top management team model that is strategically and tactically sound, with sufficient skills so they will not have to seek outside help after the plan begins.</p> <p>6. Mobilize a communications network & test it.</p>	<p>6. All hires should be of two types: either highly skilled (those who can make false identification cards and other such tasks) or low skilled (those who are willing to follow directions and register and vote fraudulently in the precincts targeted).</p> <p>7. The district operatives should have energy, a lack of curiosity and a willingness to follow orders.</p> <p>8. Avoid hires of persons with criminal arrests or convictions, misdemeanor or felony.</p> <p>9. It might be easier to hire bands of persons, i.e. college roommates, but the conspiracy is less likely to break apart if the fraudulent voters are strangers each to the other.</p> <p>10. Promise full payment only after all voting is done.</p>

PHASE TWO TASKS: MOBILIZATION

Phase Two begins with the presumption that all of the following are accomplished:

1. *The top management team is in place.*
2. *The middle level management team is in place, trained and committed.*
3. *The fundraising is sufficient to finance all phases of the conspiracy.*
4. *All safeguards against discovery have been set reliably in place.*
5. *The budget and money disbursement system is intact, tested and well managed.*
6. *The House districts and targeted precincts have been well chosen.*
7. *Key vendors are committed and available as needed.*
8. *The data system is reliable and secure.*
9. *The communications systems are reliable and secure.*
10. *There appears to be a sufficient reservoir from which to recruit the necessary fraudulent voters.*

Budgeting and fundraising activities continue in the background, supporting the conspiracy. Steps related to these categories now appear in the Operations heading.

A. Program Operations	B. The Political Environment
1. It may be possible for each fraudulent voter to achieve 5 to 10 false registrations and to vote as many times on election day, especially if advance voting can be used without mailing applications to addresses that will be false. The team needs to calculate the exact goal to minimize the number of voters required. Fewer fraudulent voters costs less money and will reduce the likelihood of leaks.	1. The conspirators will have no direct control over this vital fact: every Democratic House candidate in the targeted districts must be credible and run campaigns of sufficient intensity that a victory is plausible. If one gets arrested for driving under the influence of alcohol, her legitimate voters will probably not materialize and the fraudulent voters will not be enough to make up the difference.
2. Management will probably not give any specific briefing to the voters on the criminal consequences of their actions, although since federal candidates will be on the ballot, federal charges are possible, if the U.S. attorney gets involved in prosecution. In all things, the less the voters know, the better.	2. On the other hand, if the Republican opponent implodes, the fraud effort may not be needed in such numbers as planned. Therefore, it may be well to "double register" fraudulent voters in neighboring districts and precincts so that they can be re-directed, as the contests evolve.
3. The ratio of fraudulent votes cast to anticipated legitimate votes for the Democratic candidates must be very carefully determined for each district and every precinct and the plan must allow for a late day surge of fraudulent voters in areas where the Republican turnout seems high.	3. This would be tempting, but it must be avoided. Top and middle level conspirators must NOT lead a double life, working legitimately in other political campaigns at the same time as they are leading this conspiracy. It will dilute their energies and it may cost bona fide elections that are not tainted.
4. The fraudulent voters must be well trained to pull the right false identification cards from their pockets in the right polling place. A stupid mistake here could spoil the entire plan. Drill. Drill. Drill.	4. Fraudulent voters must have rudimentary political knowledge about the candidates on the ballot and the precincts in which they will be voting.
5. The fraudulent documents must be of the highest quality. This is absolutely vital. The names, addresses and identities must be carefully crafted. Hairstyles and clothing and appearances of the fraudulent voters should not be the same on each of their false identification documents.	5. Extra fraudulent votes will not seem untoward if the county election official has not systematically purged the registration records because of the rules in the Help American Vote Act. These counties are relatively ideal for this fraud, because the turnout will never come really close to 90%.

PHASE TWO TASKS: MOBILIZATION (continued)	
A. Program Operations	B. The Political Environment
6. The fraudulent voters must be diverse: by gender, age, race and every other dimension so as to avoid easy detection by alert authorities. They also must be matched to the demography of the district and precincts.	6. The fraudulent voters should vote for all or nearly all offices every time they vote. If they do not, they will create a suspicious pattern of ballots on which only Democratic state house candidates are marked.
7. The fraudulent voters must have somewhat randomized schedules for casting their votes, but always at times when the lines are the longest and the elections judges are likely most distracted by the lawful voters.	7. The leadership team must monitor the progress of all races so that, if necessary by turns of political conditions, they may cancel the operation in selected precincts or even in entire districts if necessary.
8. The fraudulent voters must ABSOLUTELY NOT know how many districts have been targeted, which districts are targets or what is the eventual goal of the plan. They must have plausible deniability so that the conspiracy does not unravel if one or several of them are apprehended.	8. The leadership team must resist the temptation to intervene in the public and lawful phase of the campaign. They must have no direct or indirect contacts on fundraising, opposition research, get out the vote strategies or any other phase of the campaigns of the candidate-beneficiaries.
9. The fraudulent voters must get their own transportation to the polls on election day. It would attract attention and arouse suspicion if rented mini-vans unloaded voters at regular intervals during the day. Someone would notice.	9. The leadership team must be completely aware of any involvement by interest groups that may affect individual district campaigns. These might include unions, such as teachers' groups or industry associations that might create an uneven balance in the house campaign in a single or in several districts.
PHASE THREE TASKS: IMPLEMENTATION <i>At this point all phases have blended into pure operations: getting tasks accomplished as planned, although, again fundraising and money management will continue in the background until the last voter is paid and the last faux vote cast on election day. The time line is critical in this last phase, so a column appears that counts down to Election Day (E-Day).</i>	
Time: Either Days left until the Election or Hours on Election Day.	Tasks to Perform and Considerations in their Implementation
E-Day – 35	1. Final recruitment of voters should be complete within the next 10 days including their training and credentialing and registration in high priority districts and precincts.
E-Day – 30	2. Make final appraisal of targeted districts and precincts to develop final calculation of manpower (voters) required. The goal is a net gain of 15, holding all incumbent seats.
E-Day – 25	3. Final, final recruitment of the last of the voters, including a few extra in every precinct to account for absence or unreliability.
E-Day – 35-20	4. Issue faux credentials and precinct voting assignments to the last of the recruits.
E-Day – 20	5. Begin advanced voting in precincts where possible, by voting at the election office.
E-Day – 18	6. Review logistics of getting all voters to all precincts within time frames allotted.
E-Day – 16	7. Review final roster of all voters, since registration closes in 2 days, making adjustments as necessary.
E-Day – 14	8. Voter Registration Closes: All voters must be enrolled in all targeted precincts.
E-Day – 13	9. Calculate final payroll requirement to pay on election day.

Time: Either Days left until the Election or Hours on Election Day.	Tasks to Perform and Considerations in their Implementation
E-Day – 12	Complete and submit final batch of advanced voting applications for a fraction of all the fraudulent votes intended for delivery. This may be difficult if the given addresses for the fraudulent voters are impossible delivery addresses. But, if they give the addresses of relatives or other confederates, then it may work.
E-Day – 11	Final tracking and routing of the polling places where the faux voters will be casting their ballots. This work will seal the expected vote count and will also include the planning for the last minute delivery of extra voters should the count of legitimate voters exceed expectations. These addresses and routes should be customized for every fraudulent voter as his or her shopping list for the day, including times during which they should vote in every indicated precinct. This should not be left to chance or to their choice.
E-Day – 10	A final plan for coordination and communication should be set and tested: cell phones, walkie-talkies, computers, transportation planning, reporting systems, contingency plans and the like. This will involve the entire leadership team.
E-Day – 9	A final accounting should be prepared for the cash that will be needed on Election Day for paying the voters, the leadership and their expenses. Arrangements should be finalized with the treasurer to make cash disbursements to the leaders on E-Day – 1.
E-Day – 8	The leadership team should meet to assess the feasibility of the overall plan. If incumbent Democrats are faring poorly or have abandoned their races or if a Republican tide is developing, then the theft of 15-20 House seats will not be sufficient to achieve a majority. This is the last possible moment to abandon the project altogether. This decision must be made consciously and carefully.
E-Day – 7	During this day and the next three days, the leadership team must inventory every single fraudulent voter and judge whether he or she will perform as planned and expected on Election Day. It will be unacceptable to fail because 5 or 10 voters in one district reneged on their bargain. Discipline and drilling are vital at this time.
E-Day – 6	The leadership team must review the published and otherwise available reports about election integrity efforts by county attorneys, U.S. attorneys, local police, local authorities of every type and the media. The team must be aware of the presence and, to the extent possible, the identities of such election monitors and their likely paths of activity and the training they have had. Avoiding detection depends on knowing this.
E-Day – 5	The leadership team must hold one, final contingency planning meeting to cover every possible twist of fate: including arrest; interference by local party officials or candidate representatives; inclement weather; voting machine failures; or any other development.
E-Day – 4	The leadership team will deliver to each faux voter his or her itinerary for Election Day. These should be coded and safely discarded, so as not to create concrete evidence if the conspiracy is discovered. The announcement (orally, not in writing) will also tell each voter-conspirator the location and time of the final payment for services rendered.
E-Day – 3	The leadership team will meet and divide the cash for disbursement on Election Day. This is the last time the team will meet together as a group. Their disbursement, by the designated captain, will occur on E-Day + 1 to be sure that each has discharged all duties assigned and without failure. There will be cash incentives or penalties for failure to perform as bargained.
E-Day – 2	All of the leadership team will again drive the routes assigned to their voters and assess any barriers. Each will also call all voters to build excitement about their work to come.

Time: Either Days left until the Election or Hours on Election Day.	Tasks to Perform and Considerations in their Implementation
E-Day – 1	This is the final day for mobilization calls to voters and problem-solving or dispatching extra voters to critical precincts. This is the time to charge cell phones, pack extra batteries, check computers and set the cash in envelopes with encoded names for each of the faux voters; secure the cash. The leadership team should also have a final report on all of the advanced ballots that were voted in every district possible.
E-Day Polls open + 1 hour	First call to team leaders from voters about early ballots cast: when, where and without complication, as planned.
E-Day Polls open + 3 hours	Second calls to team leaders from voters. First telephone or computer conference among leadership team, reporting incidents and progress. Include assessment of legitimate voter turnout as compared with anticipated turnout in every targeted precinct and state legislative district. The lower the turnout, the more valuable the ballots will be by the faux voters. This is a critical indicator all day long.
E-Day Polls open + 5 hours	Third calls to team leaders. They will pass along incident reports and begin to make adjustments to mobilize extra voters, as needed.
E-Day Polls open + 7 hours	Fourth calls to team leaders. The fraudulent voters should be nearly in place to cast their last two ballots for the day. If any precincts or districts must be abandoned, this will be the last hour for the top captain to decide on such a course and to order the mobilization of voters to other precincts where they are also credentialed, against such a contingency. Second telephone or computer conference with the leadership team.
E-Day Polls open + 9 hours	Fifth calls to team leaders. This will give the team captains their last opportunity to calculate whether every fraudulent ballot can be voted in the remaining hours. Drivers can be mobilized at this time to speed the falsely credentialed voters from place to place to complete their rounds.
E-Day One hour before polls close	Hour in which all voters call their final ballots and problems, if any, to the team leaders. These last minutes of mobilization, compared with voter turnout, may decide elections in selected districts. This is the last, critical hour of the project.
E-Day The Hour that Polls Close	Team leaders stand by to get full precinct-by-precinct, candidate-by-candidate total votes, preferably from the election judges on-site, but, if necessary, at the election office when the tally is posted.
E-Day Two hours after the polls close	Pay voters and return to leadership team meeting site for de-briefing.
E-Day Four hours after the polls close	The results should be known in most districts by this hour and projected from those not yet confirmed.
E-Day Plus One: The Day After	Team leaders report to designated locations for their cash payments.
E-Day Plus Two:	The highest circle of those who conceived and financed the fraud will discuss their achievements and then will disperse after having destroyed all paper and electronic records of the enterprise.

Summary and Conclusion of the Plan

Stealing 15-20 state representative races in a single general election through voter impersonation and fraud is a most ambitious enterprise. The author submits that such a conspiracy is infeasible. The level of detail outlined in the plan presented here is necessary, but probably not sufficient to achieve the goal. Failure is inevitable for many logical reasons: the funds would be far too difficult to raise; the likelihood of discovery is very high with so many persons involved; and the technical skills required are enormous, from targeting the selected seats and precincts to the production of false identities. Finally, it is implausible that one or a few persons could create and mobilize such a vast and successful conspiracy.

A Draft Budget for a Fraudulent Takeover of the Kansas House of Representatives by the minority party in the fall of 2010

Assumptions: Twenty contests for state representative would be targeted. The modal number of precincts is 17 for each state representative district. The goal is to win a net of 15 seats, while holding all incumbent positions. All fraudulent voters, therefore, would be spread among 300-350 precincts. Every fraudulent voter would vote a total of 12 times in person or in advance. Depending on the historic margins in each state representative race, the contribution of the fraudulent voters to each winning margin would only range between 300 and 500 votes.

Item	Number	Rate	Extension	Notes
Fraudulent voters	500	\$ 400	\$ 200,000	Each will vote 12 times.
Leadership captains	50	\$ 2,500	\$ 125,000	average 2 per district
Conspirators Circle	4	\$ 10,000	\$ 40,000	Highest level of leaders.
The Leader	1	\$ 20,000	\$ 20,000	
Transportation aides	80	\$ 100	\$ 8,000	includes gas expenses
Documents specialists	5	\$ 2,500	\$ 12,500	
ID Cameras, etc	4	\$ 5,000	\$ 20,000	
ID & document supplies	600	\$ 10	\$ 6,000	
Gasoline, meals, etc	500	\$ 100	\$ 50,000	
Phones & computers	55	\$ 250	\$ 13,750	rental or reimbursement
Printing (maps, etc)	600	\$ 7	\$ 4,200	
Bonus Pool for Performance			\$ 25,000	
Miscellaneous gratuities	50	\$ 250	\$ 12,500	Paid to landlords, others who will assist in the conspiracy.
TOTAL			\$536,950	

Conclusion and Summary

Who is protecting whom from what and at what costs to the democratic processes of our republic? I have attempted to counter arguments that prevailed in the Crawford case with data from the 2006 general elections for state representatives in 38 states and with a workable, although infeasible, model of an ambitious plan of voter fraud aimed at seizing control of the Kansas House of Representatives. The majority of the Supreme Court ratified arguments without empirical evidence. In the Crawford case and, apparently, in the deliberations of the Indiana legislature, there was not even a serious model of fraud or any evidence of recent elections that were upset by voter impersonation fraud. Rhetoric and sophistry seemed to have prevailed both in the Indiana capital and the Supreme Court chambers. If there is no effective, election-stealing fraud in Indiana, then why must voters be protected from phantoms that do not exist?

I agree that the Help American Vote Act created a mandate that states enact protections against fraud. Many states have already done so. The insidious side of this phenomenon is that no one counts or observes those who choose not to vote because they are ill informed or anxious about not being able to meet some identification card requirement at the polling place. Some voters may stay home because they cannot find the receipt that the county election official sent them as a record of their registration, despite the fact that they do not need such evidence. No one keeps a record of those who do come to the polling place on election day and are turned away by confusion or misdirection by an election judge.

One man's plan to safeguard the polling booth is another's design to suppress voters who are unsophisticated. The evident and technologically feasible solution is to require a biometric federal identification card for everyone living in the United States. Only those without legal status would refuse to get such identification. Civil libertarians on the political left and right would probably shout down this proposal at first light.

I do concede that there are much simpler ways to affect a fraudulent election, including tampering with software or widespread voter suppression or corruption of high or lower level election officials, but I have restricted this analysis to voter impersonation. I believe that my research and analysis is persuasive of my general proposition because such an elaborate model for voter fraud has not previously been publicly produced or scrutinized for feasibility.

The public policy literature is rife with examples of laws and regulations adopted for partisan political effect, rather than a truthful conviction that the solution befits the problem. My paper advances, but cannot wholly complete the process of critique and debunking that the worst of these voter identification laws deserves. I hope that I have advanced this debate, at least a little, with my analysis and model.

Future Research

I always advise my students to be alert to what they might find on their way toward learning about something else altogether. Often I abide my own advice and I have done so in this project.

State house elections may serve as the canary in the coal mine to alert us to systemic weaknesses in state party organizations. As I argue above, the prize, stealing partisan control of one half of a state legislature, is certainly worth having, from a partisan point of view. These are some of the questions this study has raised in my mind.

1. What variables explain the extraordinary uncompetitive environment in some states, characterized by very high rates of uncontested state representative elections?
2. What variables explain the highly competitive political environment in other states where the majority of state house seats are vigorously challenged?
3. Do apparently uncompetitive states have truly weak political parties?
4. What are the historic (10-20 year) trends in competitiveness in state house elections?
5. To what extent do national political forces affect voter preferences in state house elections?
6. How many investigations by local and state prosecutors never ripen into criminal charges for vote fraud? How many do go to trial and what have been the outcomes?
7. How many persons have truly been charged, tried and either acquitted or convicted of such charges by federal prosecutors?
8. Have federal prosecutors truly developed devious models to anticipate what various types of fraud might occur in the electoral process itself. These would include software manipulation, systematic rigging of electronic voting machines, corruption by entire panels of precinct election judges for a fraudulent purpose, voter suppression in it many forms, patterned disqualification of advance ballots to benefit specific candidates, training in subtle methods of fraudulent voting by candidate or political party committees for corrupt purposes, and a dozen other schemes intended to win elections.
9. Has anyone in the modern era ever tried the bold strategy I propose to steal an entire house of a state legislature? If not, why not?
10. Finally, back to my central argument: If fraud, like errors in multiple regression models, is randomly distributed and there are no feasible means to steal an elected office through voter impersonation fraud; should states be compelled by the federal government to enlarge, not reduce the number of persons who vote in American elections?

I plan to explore and expand my inquiry in pursuit of the answers to these questions in the years to come.

Appendix A. State Requirements for Voter Identification (October, 2008)

States that Request Photo Identification		States that Require Identification (photo not required)	
Florida	Georgia	Alabama	Alaska
Hawaii	Indiana	Arizona	Colorado
Louisiana	Michigan	Connecticut	Delaware
South Dakota		Kentucky	Missouri
		Montana	North Dakota
		Ohio	South Carolina
		Tennessee	Texas
		Virginia	Washington

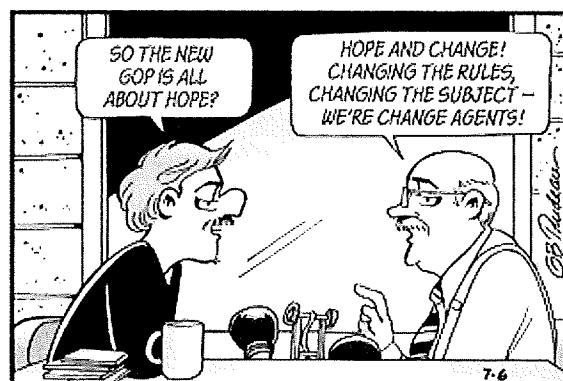
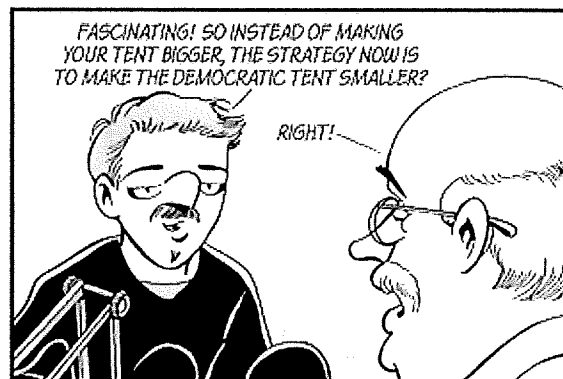
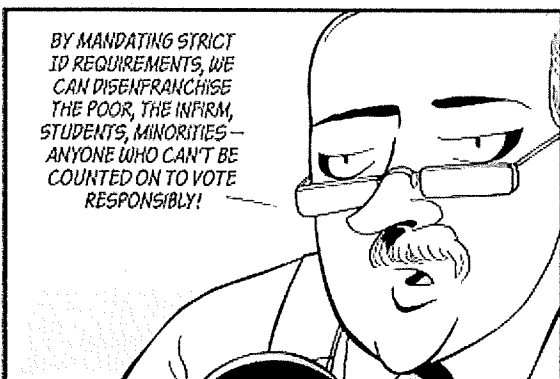
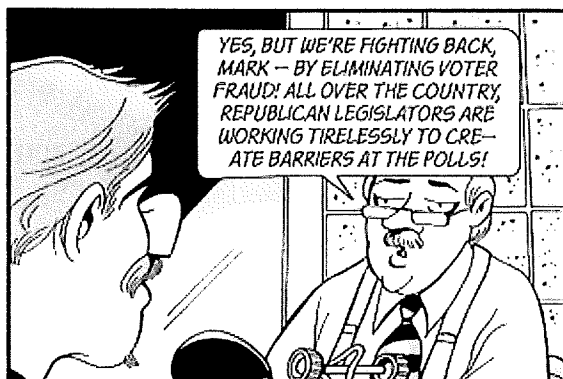
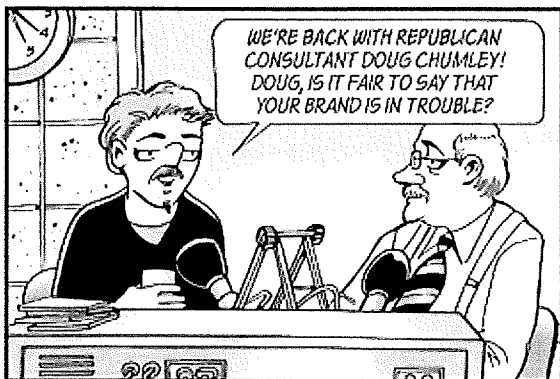
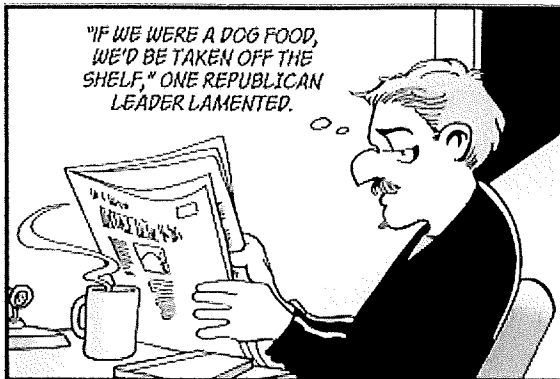
Note: Appendix B appears on the following page, requiring the entire vertical space of the page.

Appendix B. Summary of State Representative Victories with margins => 10% in 2006

STATE	# REPS	DEM	REP	TOTAL	% ALL
CA	80	39	21	60	75%
HI	51	32	2	34	67%
MI	110	47	26	73	66%
OR	60	23	12	35	58%
CT	151	67	21	88	58%
UT	75	8	35	43	57%
OH	99	33	17	50	51%
MN	134	49	18	67	50%
MT	100	18	28	46	46%
IA	100	31	13	44	44%
PA	203	53	34	87	43%
NY	150	63	0	63	42%
CO	65	14	13	27	42%
ME	151	43	17	60	40%
IL	118	27	17	44	37%
KS	125	13	33	46	37%
MO	163	23	36	59	36%
IN	100	22	13	35	35%
TX	150	31	21	52	35%
TN	99	23	11	34	34%
NV	42	10	4	14	33%
FL	67	10	12	22	33%
DE	41	6	7	13	32%
ID	70	2	19	21	30%
AL	105	20	11	31	30%
MS	122	17	19	36	30%
RI	75	21	0	21	28%
AK	40	4	7	11	28%
OK	48	11	16	27	27%
WI	99	14	12	26	26%
NC	120	21	10	31	26%
MA	160	35	2	37	23%
WY	60	6	7	13	22%
SC	124	9	15	24	19%
KY	100	16	3	19	19%
GA	180	8	25	33	18%
NM	70	7	4	11	16%
AR	100	11	3	14	14%
TOTAL	3,907	887	564	1,451	

Appendix C. Summary of State Representative Victories with margins < 10% in 2006

STATE	# REPS	DEM	REP	TOTAL	% ALL
ME	151	42	43	85	56%
MN	134	36	31	67	50%
FL	67	8	22	30	45%
AK	40	7	10	17	43%
OR	60	8	17	25	42%
NV	42	9	8	17	40%
TX	150	17	43	60	40%
OH	99	9	30	39	39%
CO	65	14	11	25	38%
MT	100	20	18	38	38%
WI	99	9	27	36	36%
IA	100	12	23	35	35%
IN	100	12	20	32	32%
MO	163	13	39	52	32%
MI	110	9	26	35	32%
KS	125	13	26	39	31%
DE	41	3	9	12	29%
NM	70	6	14	20	29%
UT	75	11	9	20	27%
ID	70	9	9	18	26%
KY	100	11	14	25	25%
PA	203	17	33	50	25%
RI	75	10	7	17	23%
NC	120	15	11	26	22%
HI	51	7	4	11	22%
OK	48	7	14	21	21%
CT	151	21	10	31	21%
CA	80	5	11	16	20%
TN	99	7	10	17	17%
AR	100	14	3	17	17%
WY	60	3	7	10	17%
MS	122	9	8	17	14%
AL	105	6	8	14	13%
IL	118	5	10	15	13%
GA	180	7	11	18	10%
SC	124	7	5	12	10%
MA	160	11	4	15	9%
TOTAL	3,757	429	605	1,034	



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**House Standing Committee on Elections
Hearing on House Bill 2067
Testimony of Will Crossley
Counsel and Director of Voter Protection, Democratic National Committee
Submitted February 1, 2011**

Introduction

The Democratic National Committee (DNC) is committed to promoting a system of elections that is accessible, open, and fair – one that guarantees every eligible American the constitutional right to equal participation in a secure political process. On behalf of the DNC, we thank the House Standing Committee on Elections for providing an opportunity to discuss the implications of House Bill 2067, and submit the following written testimony to share our concerns regarding the photo ID and citizenship verification provisions of this proposed law.

The path to full voting rights for all American citizens was long and fraught – the product of a struggle as old as this nation. The passage of the Voting Rights Act in 1965 was an important step toward securing the right to vote, but it was not the end of discrimination or disenfranchisement. Today, voters continue to encounter obstacles and intimidation at every step of the voting process, from registration to casting a ballot. Recently, select state legislatures have sought to require voters to present photo identification and citizenship documentation as a prerequisite to voting, asserting that such laws are essential to prevent voter fraud. But federal and state law already protect against voter fraud, including by requiring a voter to verify his identity before his vote will be counted. Moreover, allegations of voter fraud are without merit despite a decade-long effort by proponents of these laws to unearth evidence of a widespread and serious problem. These laws are wholly unnecessary and impose a needless and considerable burden on individual voters and states alike.

The photo ID provision of House Bill 2067 is not necessary in light of existing safeguards and both federal and state legal structures that adequately punish fraudulent voting

Proponents of House Bill 2067 assert that Kansas' system of election administration is vulnerable to fraud and manipulation, and that a photo ID requirement is necessary to imbue it with the security and integrity that elections merit. This is simply not true. Ample federal and state safeguards exist both to prevent against fraud and punish it should it occur.

First, both Kansas and federal law require that a voter's identity be verified before his vote is counted. Two federal statutes, the Help American Vote Act of 2002 (HAVA) and the National Voter Registration Act of 1993 (NVRA), set standards for the verification of voters' identities, including establishing requirements for first-time voters and directing states to compare voter registration applications with existing databases.¹ Under Kansas law, a voter who has never voted before, or who re-registered after having his previous registration canceled, must show identification before his ballot can count.² Kansas law requires that the ID contain the voter's current name and address, as indicated on registration lists. Acceptable forms of ID are a current and valid Kansas driver's license, nondriver's identification card, utility bill, bank statement, paycheck, government check or other government document.

¹ 42 U.S.C. § 1973gg-4(c); 42 U.S.C. § 1973gg-6(a)(2).

² K.S.A. § 25-2908(d).

Federal and state law also impose significant penalties for committing voter fraud. Under Kansas law, false impersonation of a voter risks up to 17 months in prison and a \$100,000 fine.³ Language on both the Kansas Application for Advance Voting Ballot and the Kansas Voter Registration Application prominently display warnings of the punishment that may be imposed in connection with an act of fraud.⁴ Under federal law, each individual act of voter fraud in connection with a federal election is punishable by up to five years in prison and a \$10,000 fine.⁵ Between 2002 and 2005, the federal government obtained five convictions of people who voted twice in the same election, once in Kansas and again in Missouri.⁶ The photo ID provision of House Bill 2067, which only establishes an additional means by which a voter must prove that she is who she says she is, does nothing to prevent double voting.

Similarly, House Bill 2067 seeks to undermine Kansas' existing judicial structure, by conferring on the Secretary of State the extraordinary power to prosecute election crimes. Presently, this authority rests with the Attorney General, who is charged with the responsibility of defending the laws of the state. But House Bill 2067 seeks to divide this authority, conferring on the Secretary of State the power to prosecute election crimes. We know of no other state where the Secretary of State has prosecutorial powers of this sort, making this an unprecedented, inadequately informed and demonstrably unnecessary shift.

House Bill 2067's proponents have not demonstrated that the photo ID law is anything but redundant. And when we consider that an individual act of voter fraud will yield, at most, a single vote, the contrast between this minimal benefit and these substantial associated risks becomes particularly stark. As the Brennan Center has noted, "fraud by individual voters is a singularly foolish and ineffective way to attempt to win an election."⁷

House Bill 2067's photo ID requirement lacks sufficient evidentiary support

In recent years, those state legislatures that have sought to pass increasingly stringent photo identification laws, assert, without proof, that photo ID is necessary to combat widespread occurrences of voter fraud. In Kansas, advocates of House Bill 2067 have alleged that voter fraud is a pervasive problem, and that election law violations have been reported across the state.

In reality, voter fraud is exceedingly rare. A 2007 report found that between 2002 and 2005, a total of 24 people were convicted of or pleaded guilty at the federal level to illegal voting – an average of just eight people a year.⁸ The failure to unearth actual evidence of systemic voter fraud is not for lack of trying. After its five-year effort, from 2002 to 2007, to aggressively root out voter fraud – a high priority of then-Attorney General John Ashcroft – the United States Department of Justice found "virtually no evidence of any organized effort to skew federal

³ K.S.A. § 25-2431; K.S.A. § 21-4503a; K.S.A. § 21-4704; Kansas Sentencing Guidelines Grid, Office of the District Attorney, 18th Judicial District of the State of Kansas, (19 November 2009), http://www.sedgwickcounty.org/da/sentencing_grid.html (accessed 1/31/11).

⁴ Kansas Application for Advance Voting Ballot, from Kansas Secretary of State's Office, http://www.kssos.org/elections/elections_registration_voting.html (accessed 1/31/11).

⁵ 42 U.S.C. § 1973i(c), (e); 42 U.S.C. § 1973gg-10.

⁶ Lorraine Minnite, "The Politics of Voter Fraud," 8, http://www.projectvote.org/images/publications/Policy%20Reports%20and%20Guides/Politics_of_Voter_Fraud_Final.pdf (accessed 1/31/11).

⁷ Justin Levitt, *The Truth About Voter Fraud*, (2007), 7, <http://www.brennancenter.org/content/resource/truthaboutvoterfraud/> (accessed 1/31/11).

⁸ Id.

elections.”⁹ Indeed, many of those charged by DOJ in this period appeared to have misunderstood eligibility rules or mistakenly filled out registration forms.¹⁰

This is not to say that there are no election irregularities, or that no election-related misconduct ever occurs. But we must evaluate these concerns carefully to avoid passing unnecessary, ineffective and burdensome regulation. A 2007 study by the Brennan Center for Justice at NYU School of Law concluded that allegations of voter fraud often are, upon further inspection, found to be baseless, more credibly explained by voter or clerical error than willful misconduct on the part of a person seeking to defraud the election system.¹¹ The study – which reviewed the findings of state and federal courts; state and local election officials; multipartisan and bipartisan federal commissions; political party entities; and authors, journalists, and bloggers – concluded that only “a tiny portion of the claimed illegality is substantiated” and that “much evidence that purports to reveal voter fraud can be traced to causes far more logical than fraud by voters.”¹²

The Brennan Center’s review of allegations of double voting in Kansas’ neighbor, Missouri, illustrates how simple clerical error can create an inflated impression of fraud. In 2000 and 2002, hundreds of voters were alleged, based on a computer match of names and dates of birth on voter rolls, to have voted twice, either within Missouri or once in that state and once in Kansas. An analysis of these allegations of double voting found that “computer files contain many errors that show people voting who did not actually vote.”¹³ Reporters tracked 18 double voting cases in Kansas City, Missouri, and of these, 13 were found to result from clerical errors, two were uncertain, and three appeared to show double voting. Of the three that were determined to be double voting (two in 2000 and one in 2002), at least two resulted in federal convictions. Overall, the documented fraud in the Missouri study amounted to a rate of 0.0003%.¹⁴

Despite the inability of investigators and photo ID advocates within Kansas and nationwide to identify credible evidence of voter fraud, this body is considering one of the most stringent photo identification laws in the nation. Moreover, the proposed law is inconsistent. Specifically, House Bill 2067 exacts differing requirements for voters casting ballots in person and those voting by mail. The bill requires a voter casting a ballot in person to provide current and valid photo identification before his vote will be counted.¹⁵ A voter who seeks to cast an advance ballot by mail has the choice whether to provide his current and valid Kansas driver’s license number, his nondriver’s ID card number, or a photocopy of another acceptable photo ID.¹⁶ Creating a higher burden for voters casting ballots in person is illogical given that there are so few reports of in-person voter fraud, and fewer still that are substantiated.¹⁷ Indeed, a person is more likely to be struck by lightning than to impersonate a voter at the polls and there is not a single documented case of voter impersonation fraud in Kansas.¹⁸

The proposed photo ID requirement is bad public policy

⁹ Eric Lipton & Ian Urbina, “In 5-Year Effort, Scant Evidence of Voter Fraud,” *New York Times*, 12 April 2007, <http://www.nytimes.com/2007/04/12/washington/12fraud.html?pagewanted=all> (accessed 1/31/11).

¹⁰ Lipton & Urbina.

¹¹ Levitt, *The Truth About Voter Fraud*, 7-11.

¹² Levitt, *The Truth About Voter Fraud*, 3, 7.

¹³ Levitt, *The Truth About Voter Fraud*, 24.

¹⁴ Levitt, *The Truth About Voter Fraud*, 13.

¹⁵ Kansas House Bill 2067, Section 2(d) (2011).

¹⁶ Kansas House Bill 2067, Section 2(c) (2011).

¹⁷ Levitt, *The Truth About Voter Fraud*, 12.

¹⁸ “Kansas League of Women Voters to Challenges Need for Voter Photo ID and Documented Citizenship Proof,” <http://www.lwvk.org/PDF/VoterRegisIDIssue/Challenge.pdf> (accessed 1/31/11).

In addition to being unnecessary, House Bill 2067 is simply bad public policy, imposing significant burdens on both individual voters and on the state.

First, House Bill 2067 will impose significant financial burdens on the state, likely costing taxpayers millions of dollars each year.¹⁹ We do not believe that the Secretary of State has yet released a cost analysis, but a review of an analysis of a similar bill in Missouri is illustrative. The fiscal note produced in 2006 by the Oversight Division of that state's General Assembly's Committee on Legislative Research found that that state's proposed photo ID law would cost the state close to \$6 million in the first year of implementation, and roughly \$4 million in each of the two following years.²⁰

Costs to the state that would result from the passage of House Bill 2067 include the provision of both free ID cards and the necessary underlying documentation to voters receiving public assistance or who reside in a household whose income is 150 percent or less of the federal poverty level – an estimated 620,000 Kansans;²¹ additional poll worker training, as poll workers take on the function of verifying the validity of various forms of ID; costs associated with the Secretary of State's new prosecutorial function under Section 15 of the bill; and extensive voter education campaigns. News organizations in Kansas have widely reported that there is an estimated \$550 million shortfall for the upcoming fiscal year, which begins on July 1.²² A financial burden of this magnitude, which amounts to uniform legislative restrictions to address at best a trivial, non-consequential, and extraordinarily rare instance – which is already covered by current law – simply cannot be justified.

Second, House Bill 2067 will disenfranchise eligible voters, substantial numbers of which do not possess the required identification. Nationwide, 11 percent of U.S. citizens do not have a current government-issued photo ID.²³ According to the Kansas League of Women Voters, as many as 200,000 Kansans would be disenfranchised immediately if House Bill 2067 becomes law.²⁴ These new, unnecessary burdens will be disproportionately felt by low-income, elderly, and minority voters, as well as voters with disabilities. According to a 2006 survey, 15 percent of voting-age citizens earning less than \$35,000 per year do not have a current, government-issued photo ID – a rate that is more than double that of those earning above \$35,000.²⁵ Eighteen percent of citizens age 65 and older lack the necessary photo ID, as do 10 percent of Americans with disabilities, and 25 percent of African Americans of voting age.²⁶ Identification requirements have also been found to have a chilling effect on eligible voters, depressing turnout

¹⁹ Tova Wang, "Demos Voter Identification Fact Sheet," 5 January 2011, <http://www.demos.org/pubs/voterID.pdf> (accessed 1/31/11).

²⁰ Wang, "Demos Voter Identification Fact Sheet;" Missouri Committee on Legislative Research, Oversight Division's Fiscal Note on L.R. No. 4947-25, (12 May 2006), <https://docs.google.com/a/wichitanaacp.org/viewer?a=v&pid=sites&srcid=d2ljaGl0YW5hYWNwLm9yZ3x3aWNoaXRhLW5hYWNwGd4Ojc3NTQzNWZkOGRIY2FiMzE> (accessed 1/31/11).

²¹ Matt Schofield, "Kobach's Limitless Trust in His Fellow Man," *Kansas City Star*, 20 January 2011, <http://voices.kansascity.com/entries/kobachs-limitless-trust-his-fellow-man/> (accessed 1/31/11).

²² The Associated Press, "Kansas' Projected Budget Shortfall Rises to \$550 Million," *The Kansas City Star*, 5 January 2011, <http://www.kansascity.com/2011/01/05/2562477/kansas-projected-budget-shortfall.html> (accessed 1/31/11).

²³ *Citizens Without Proof: A Survey Of Americans' Possession Of Documentary Proof Of Citizenship And Photo Identification*, Brennan Center for Justice (November 2006), 3, http://www.brennancenter.org/content/resource/citizens_without_proof_a_survey_of_americans_possession_of_documentary_proof/ (accessed 1/31/11).

²⁴ "Kansas League of Women Voters to Challenges Need for Voter Photo ID and Documented Citizenship Proof."

²⁵ *Citizens Without Proof: A Survey Of Americans' Possession Of Documentary Proof Of Citizenship And Photo Identification*, Brennan Center for Justice, 3.

²⁶ *Citizens Without Proof: A Survey Of Americans' Possession Of Documentary Proof Of Citizenship And Photo Identification*, Brennan Center for Justice, 3; Brennan Center Press Release, "Voting Rights Group Urge Carter-Baker Election Commission to Oppose National Voter Identification Card," 29 June 2005, http://www.brennancenter.org/content/resource/voting_rights_groups_urge_carter_baker_election_commission_to_oppose_nation/ (accessed 1/31/11).

in minority communities. A 2008 study conducted by scholars at Brown University affirmed earlier findings that turnout among minority and low-income voters decreases when the state requests voter ID at the polls.²⁷ Overall, the study found that such voter ID requirements have an “impact [that] is negative.”²⁸

The proposed citizenship verification requirement is unnecessary and violates federal law

On behalf of the DNC, we further object to House Bill 2067’s requirement that a voter provide documentation of his citizenship when seeking to register to vote. Under the proposed law, each voter seeking to register must provide with her registration application a document that indicates that the applicant is a United States citizen. Examples of acceptable identification include a birth certificate, a U.S. passport, and naturalization documents.²⁹

This citizenship verification provision has been found to violate federal law and exposes Kansas to litigation in federal court. In October 2010, a three-judge panel of the Ninth Circuit Court of Appeals held Arizona’s citizenship verification requirement void as preempted by the National Voter Registration Act (NVRA). The court wrote that the law was “not in harmony with the intent behind the NVRA, which is to reduce state-imposed obstacles to federal registration.”³⁰ Citing the federal law’s myriad protections against voter fraud, the court further held that “Congress was well aware of the problem of voter fraud when it passed the NVRA,” and was not persuaded by Arizona’s argument that it needs to establish barriers to registration to prevent against the very same issue.³¹ In passing House Bill 2067, Kansas is effectively inviting a similarly long and costly legal battle in which this state’s position will be contrary to directly applicable persuasive authority.

As the Ninth Circuit recognized, existing laws criminalize and punish voter fraud. In addition to the lengthy jail time and hefty fines that federal and state law impose, non-citizens who vote illegally risk deportation.³² The notion that a non-citizen would jeopardize remaining in the United States for the benefit of a single vote defies all logic.

Additionally, the citizenship verification requirement simply does not address a genuine problem. Non-citizen voting is both extremely rare and typically unintentional.³³ From October 2002 to September 2005, the federal government prosecuted just 20 people in four states who were ineligible to register or vote under state law because they were not U.S. citizens.³⁴ Proponents of citizenship verification requirements typically point to a handful of anecdotes about non-citizens registering to vote or casting ballots. But these allegations, like those of voter impersonation, are most often explained by voter confusion or clerical error.³⁵ In some cases, the voter’s name has been improperly matched to that of a non-citizen in a state or federal database.³⁶

²⁷ John Logan & Jennifer Darrah, “The Suppressive Effects of Voter ID Requirements on Naturalization and Political Participation,” 2 January 2008, <http://www.s4.brown.edu/voterid/Voter%20id%20report%20final.pdf> (accessed 1/31/11).

²⁸ Darrah & Logan, 8.

²⁹ Kansas House Bill 2067, Section 7(l) (2011).

³⁰ *Gonzalez v. Arizona* at 17655.

³¹ *Gonzalez v. Arizona* at 17656.

³² 42 U.S.C. § 1973i(c), (e); 42 U.S.C. § 1973gg-10.

³³ *Proof of Citizenship*, Brennan Center for Justice (September 2006),

http://www.brennancenter.org/content/resource/policy_brief_on_proof_of_citizenship/ (accessed 1/31/11); MALDEF, “The Myth of Widespread Non-Citizen Voting,” 20 August 2008, 2, http://maldef.org/truthinimmigration/Rebuttal_to_Heritage_Foundation.pdf (accessed 1/31/11).

³⁴ Lorraine Minnite, “The Politics of Voter Fraud,” 20.

³⁵ *Proof of Citizenship*, Brennan Center for Justice; MALDEF, “The Myth of Widespread Non-Citizen Voting,” 6.

³⁶ MALDEF, “The Myth of Widespread Non-Citizen Voting,” 7.

In others, the voter has misunderstood the eligibility requirements and mistakenly believes she is eligible.³⁷

Acquiring the documentation necessary to prove citizenship under the proposed bill is expensive and time-consuming. A Kansan seeking to obtain a certified copy of her birth certificate would need to pay \$15 for the copy, plus an additional \$15 if the record cannot be located and a record search is required.³⁸ A U.S. passport can cost up to \$165.³⁹ For a naturalized citizen, the cost of replacement citizenship documents is \$220.⁴⁰ Acquiring these documents can take time – up to a year – by which point the election may have come and gone.⁴¹

If passed into law, House Bill 2067's citizenship verification will subject significant numbers of Kansas voters to unjustified hardship. A 2006 study on Americans' access to photo ID and citizenship documentation found that seven percent of U.S. citizens – close to 22 million people by today's census numbers⁴² – do not have documentary proof of their citizenship status.⁴³ And the burden imposed by the requirement is more acutely felt by certain groups. Americans who earn less than \$25,000 per year are more than twice as likely to lack citizenship documents as those earning more than \$25,000.⁴⁴ Fewer than half of voting-age women with access to their U.S. birth certificates have one bearing current legal name.⁴⁵ According to the Kansas League of Women Voters, approximately one million women in Kansas do not have a birth certificate bearing their current name, because they took their husbands' names when they married.⁴⁶

Conclusion

On behalf of the DNC, and recognizing that the right to vote is one of our most fundamental, we urge the House Standing Committee on Elections to reject House Bill 2067.

³⁷ *Proof of Citizenship*, Brennan Center for Justice; MALDEF, “The Myth of Widespread Non-Citizen Voting,” 6.

³⁸ Kansas Department of Health and Environment, “Application for Certified Copy of Kansas Birth Certificate,” <http://www.kdheks.gov/vital/download/birth.pdf> (accessed 1/31/11).

³⁹ U.S. State Department, Passport Fees, http://travel.state.gov/passport/fees/fees_837.html (accessed 1/31/11).

⁴⁰ *Proof of Citizenship*, Brennan Center for Justice.

⁴¹ *Proof of Citizenship*, Brennan Center for Justice.

⁴² U.S. Census Bureau, “U.S. & World Population Clocks,” <http://www.census.gov/main/www/popclock.html> (accessed 1/31/11).

⁴³ *Citizens Without Proof: A Survey Of Americans' Possession Of Documentary Proof Of Citizenship And Photo Identification*, Brennan Center for Justice, 2.

⁴⁴ *Citizens Without Proof: A Survey Of Americans' Possession Of Documentary Proof Of Citizenship And Photo Identification*, Brennan Center for Justice, 2.

⁴⁵ *Citizens Without Proof: A Survey Of Americans' Possession Of Documentary Proof Of Citizenship And Photo Identification*, Brennan Center for Justice,

⁴⁶ “Kansas League of Women Voters to Challenges Need for Voter Photo ID and Documented Citizenship Proof.”



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February 9, 2011

**Testimony in opposition to New Section 15 of HB 2067
Kansas County and District Attorney Association**

Mr. Chair and members of the committee:

The Kansas County and District Attorney Association opposes the current form of new section 15 of HB 2067.

First, there is no current authority by statute (KSA 75-401 et. seq.) for the Secretary of State to prosecute any action in any form. Therefore, this section is a significant expansion of the Secretary of State's power. This expansion of power is unnecessary and redundant given that county and district attorneys already have, "the duty [...] to appear in any court having jurisdiction within the county and prosecute or defend on behalf of the people all actions and proceedings, civil or criminal, in which the state or the county is a party or interested." K.S.A. 19-702(a); See also K.S.A. 22a-104(a)(similar duties of the district attorney). Giving independent authority to the Secretary of State to prosecute local crimes provides unnecessary overlap of duties and resources.

Additionally, as written, the proposed language would create the need for separate investigatory and prosecutorial personnel within the Secretary of State's office. This increase and devotion of resources appears again, to be unnecessary and wasteful given that there are already officials more appropriately positioned and resourced to deal with such matters. If such concurrent authority exists in other agencies, there usually is the appointment of a special assistant attorney general. Absent such concurrent authority, the traditional approach is for the attorney general to consult with and advise county attorneys, when *requested* by the county attorney, in all matters pertaining to the county attorney's official duties. See K.S.A. 75-704.

In conclusion, the KCDAAs believe that any prosecutorial power to enforce this legislation should remain with the local, county or district attorney. If the situation requires, the county or district attorney will request the advice and consultation of the attorney general.



TESTIMONY

Elias L. Garcia, State Director, League of United Latin American Citizens

Elections Committee -- HB 2067 Kansas House of Representatives

February 9, 2011

Thank you Mr. Chair and honorable committee members for the opportunity to speak in opposition to HB 2067. I submit this testimony as State Director of the League of United Latin American Citizens (LULAC) the largest Latino civil organization in the United States representing over 700 councils nationwide (including 5 councils in Kansas).

First and foremost I would like to state that no-one, not one person in the state of Kansas supports the practice of voter-fraud. Having said that I would like to emphatically encourage legislators, that prior to any rush-to-passage of this bill, to analyze all available data and facts that would demonstrate that voter fraud is in fact a significant problem in our state,

Granted, while one can argue that one case of voter fraud is too much voter fraud, does the magnitude of voter fraud in Kansas justify the restructuring and expense that is going to be required to implement HB 2067 and its new Kansas voting processes? Can supporters of this bill demonstrate the actual value of this bill without first qualitatively determining whether, for every ten cases of voter fraud, would HB 2067 deter one, ten, one-hundred individuals from attempting voter fraud?? (Again, how many cases of voter fraud did we have in Kansas over the last decade?)

Further, please try to remember, do you ever recall former Sec. of State Ron Thornburg raising voter fraud as a critical issue at any time during his successful tenure? As a matter of fact, do you remember any Kansas political candidate who ran for elected office file any claims alleging that voter fraud compromised outcomes of Kansas elections? While anecdotal references and unsubstantiated claims of voter fraud under-reporting suffice (and even flourish) in the promotion of political campaigns, I would suggest to you that such claims do not rise to the level or standard required for legislative action. Isn't it reasonable to expect that our legislators understand the scope and nature of voter fraud (via empirical data, studies, etc.) prior to enacting a campaign proposal into law.

Nationally, the United States has one of the lowest voter-participation rates among the world's democracies. In Kansas, it has been documented over and over again, that voter participation continues to get lower and lower. Will HB 2067 do more harm than good?? Currently, be it due to cost, access to services, and other causes that have yet to be determined, the data is clear in reflecting that people of color, the elderly, and people with disabilities and the poor are the ones least likely have a photo I.D. HB would impose further barriers to voter-participation of these populations. Again, we must give due consideration and assess the cost or potential cost of HB 2067. Is enacting HB 2067 worth denying Kansans their vote. Is HB 2067 worth the cost flushing out a few cases of voter fraud every decade where people forgot to change their name, address, telephone number??

Honorable Chair and members of the committee, Kansans will not be silent on this issue as we deserve the opportunity to connect with our government and it all begins with the promotion of voter participation and governmental engagement. The fact is that HB 2067 supports the creation of artificial barriers that would deter Kansans from voting, especially people of color, women, and the elderly. We encourage you to vote on the side of Kansans and encourage you to vote thumbs up for Kansans and a thumbs down for HB 2067.

HOUSE ELECTIONS
DATE: 2/9/11
ATTACHMENT: 11



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January 31, 2011

The Honorable Scott Schwab, Chairman
House Elections Committee

Reference: HB 2067 Voter ID Requirements.

Good morning Chairman Schwab and members of the House Elections Committee. My name is Bob Harvey and I volunteer for AARP Kansas. While I currently serve as a member of the AARP Kansas Diversity Council, I have also served as a member of the AARP National Policy Council, a volunteer body which recommends national policy to the AARP Board of Directors. I am an attorney and a retired judge

AARP is a nonprofit, nonpartisan membership organization dedicated to making life better for people 50 and over. AARP has more than more than 341,000 members in Kansas. We provide information and resources and engage in legislative, regulatory and legal advocacy. Thank you for allowing us the opportunity to present our opposition to HB 2067.

The right to vote is the most basic of all political rights. Over the last several years, the American public has become aware of the many inconsistencies that exist in voting systems throughout the country and which compromise the integrity of the election process. Overall, voting mechanisms lack uniform standards, and in many locations, they have failed to keep pace with new technologies. Of particular concern are the unnecessary, complex rules for voter registration and absentee balloting and physical and other barriers to voting in-person. These impediments to exercising the franchise tend to disproportionately prevent minorities, older persons and people with disabilities from voting or from having their vote counted. And as we all know, the overall rate of voter participation in the U.S. is woefully low, especially when compared to other industrial democracies. User-friendly voting and voting procedures would encourage larger numbers of Americans to vote. In order to ensure that more Americans participate in the electoral process, people's confidence needs to be restored by an election system that is fair, accurate, accessible and secure.

AARP has a longstanding commitment to full citizen participation in the democratic process at the federal, state and local levels. For that reason, AARP has supported electoral reform at the federal level -- i.e., enactment of the National Voter Registration Act (NVRA), the Help America Vote Act (HAVA), the Bipartisan Campaign Reform Act (BCRA), and reauthorization of the Voting Rights Act (VRA). AARP also conducts

extensive voter education efforts in each of the 53 U.S. states and territories in which it has offices.

Congress passed HAVA in 2002, requiring states to meet uniform standards in federal election technology and administration. One result of these reforms is that states are required to develop and maintain centralized voter lists, offer provisional ballots, permit voters to verify and correct their ballots, and meet accessibility requirements for voters with disabilities.

HAVA imposes more stringent voter-identification requirements for voters casting a ballot for the first time after having registered to vote by mail. This provision – intended as an anti-fraud measure – could discourage participation by otherwise-eligible low-income, minority, foreign-born and older voters. Ultimately, the success of the law in allowing all eligible citizens the opportunity to vote and have their vote accurately counted depends on state implementation laws and administrative procedures.

VOTER ID REQUIREMENTS

As the states have become more active in addressing access to the ballot in recent years, AARP attorneys have represented citizens – a great many of whom are aged 50+ – who could become disenfranchised. AARP also has participated in various advisory capacities, at both the federal and state levels, to support citizen empowerment through meaningful opportunity to exercise the franchise.

We believe that “photo ID” voting requirements unnecessarily limit rather than expand citizen participation in the electoral process, and the Supreme Court acknowledged that in-person voting fraud is a “problem” that exists barely, if at all.

In the jurisdictions that have embraced strict “photo ID” policy, state statutes or ballot initiatives have sought to enact laws that elevate proof requirements for voters to register (AZ) and/or to vote in person (GA and AZ). These laws are based on assertions of voter fraud. This assertion heightens tensions among all voters. The new state laws and implementing rules, we believe, could significantly limit opportunities to register and/or vote. Many persons who are qualified to vote, but do not have ready access to documents – such as birth certificates, driver’s licenses and passports – that have never been deemed necessary in the past, may lose the fundamental right to vote.

AARP is particularly concerned that such rules will prevent many eligible older voters, voters with disabilities (who may be unable to obtain the requisite photo or citizenship ID) and low income voters (who may not be able to afford such ID) from exercising their right to vote. Such laws adversely affect older voters who (1) no longer drive and do not need licenses; (2) do not now travel or never did and therefore have no passport; or (3)

are persons without birth certificates (e.g., Southern blacks or some Native Americans who were not allowed in white hospitals that provided documentation). On behalf of older Americans who have largely shaped the values of our democracy, we urge great care to ensure that the basic right to vote is not undermined in an overbroad effort to address unproven allegations of voting abuse.

The need for voter ID laws is understandable, but overly stringent barriers to voting are questionable. There is very little evidence of actual in-person voter fraud. The problem in this country is not people trying to vote who shouldn't -- it's all the people who can vote, but don't. Many people don't vote because of rules that make it too complicated, too difficult, or too costly to go to the polls. We need laws that make it easier to vote, not harder. Just imagine, you're 75 years old, you've been going to your local polling place for a half century, and suddenly you're asked to prove who you are with a new photo ID. The ID will cost extra money to obtain. If you do not have or cannot find your birth certificate — necessary to prove you are a citizen — you may have to spend up to \$200 to get a replacement copy. For someone on a fixed income, this is an unnecessary cost, and it should not be necessary for you to prove your identity after having gone to the same polling station for decades. We think that there are less punitive alternatives to address alleged in-person voter fraud.

Further, the potential for poll worker confusion and selective enforcement of voter ID rules are great — especially given recent and historic voting rights abuses. In many instances, poll workers are not adequately trained in advance to fully grasp the nuances of such requirements as:

- which IDs are acceptable;
- who should be asked for their IDs;
- what is proper protocol for attending to persons lacking proper ID; and
- who is responsible for ensuring voter access to a provisional ballot or alternative voting opportunity?

Leaving the decision to subjective interpretation may result in racial and other forms of profiling at the polling place.

Even casting a provisional ballot can be a barrier to voting. Provisional ballots have been suggested as a “compromise” that is equivalent to casting a ballot, but provisional ballots are valid only when counted — and many are not.

AARP believes that voter ID requirements and provisional ballots should be tools to promote honest and effective elections, but should not present administrative, financial or other barriers to the right to vote. Effective remedies legislators could consider include:

- sworn vouching statements to affirm in-person voter identity;
- thorough, advance training of poll workers to ensure each voter understands how

to cast a ballot that will be counted;

- requirements to provide, in advance of elections, free voter ID to registered voters and new registrants for whom the financial and administrative cost of an official ID is burdensome;
- procedures that encourage and promote maximum participation in the electoral process by expanding the range of voting times, locations and means (e.g., by offering in-person, vote-by-mail, early and secure online voting); and
- repeal of unreasonable identification requirements that discourage or prevent certain classes of citizens from voting.

Therefore, AARP Kansas opposes HB 2067 and respectfully requests your opposition to this legislation.

Thank you.

Resources:

The Policy Book, AARP Public Policies 2009