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THE STATE OF THE RIGHT TO VOTE
AFTER THE 2012 ELECTION

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WEDNESDAY, DECEMBER 19, 2012

United States Senate,
Committee on the Judiciary,
Washington, D.C.

The Committee met, pursuant to notice, at 10:06 a.m.,
in room SD-226, Dirksen Senate Office Building, Hon. Patrick
J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Durbin, Whitehouse, Coons,
Grassley, and Lee.

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

Chairman Leahy. I am told that Senator Grassley is on
his way, and I am going to start and, of course, yield to
him when he comes.

Our Nation has grown stronger since its founding as
more Americans have been able to exercise their right to
vote. The actions taken by previous generations--through a
Civil War, through constitutional amendments--in fact,
Senator Grassley is here--and through the long struggles of
the civil rights movement--have worked to break down
barriers that stood in the way of all Americans
participating in our democracy. Yet as we saw in last

1 month's election, our work is far from done. Barriers to
2 voting continue to exist and evolve.

3 In my State of Vermont, where we have the town meeting
4 with open participation, democracy, Vermonters cannot
5 understand why there is this barrier to voting.

6 You know, the right to vote and to have your vote count
7 is a foundational right because it secures the effectiveness
8 of the other protections of the law and the Constitution.
9 Before the election, we held a hearing that focused on new
10 barriers to the right to vote, building on the work done in
11 field hearings held by Senator Durbin in Florida and Ohio.
12 We heard testimony about the renewed effort in many States
13 to deny millions of Americans access to the ballot box
14 through voter purges and voter identification laws. I was
15 concerned that these barriers would stand between millions
16 of Americans and the ballot box.

17 What we saw during the election shows that we were
18 right to be concerned. Purges of voter rolls, restrictions
19 on voter registration, and limitations on early voting--
20 which in previous elections enabled millions to vote--led to
21 unnecessary and avoidable problems on election day.

22 You had onerous and confusing voter identification
23 requirements, complications in places like Pennsylvania,
24 Arizona, Texas, and South Carolina. And throughout the
25 country, misleading political advertising and robocalls

1 worked to sow confusion and suppress the vote.

2 Just because millions of Americans successfully
3 overcame abusive practices in order to cast their ballot
4 does not make these practices right. It does not justify
5 the burdens that prevented millions more from being able to
6 vote. Barriers that remind us of a time when discriminatory
7 practices such as poll taxes, literacy tests, and
8 grandfather clauses were commonplace have no place in 21st
9 century America. Barriers that seem to fall heaviest on
10 African Americans, Hispanics, military veterans, college
11 students, the poor, and senior citizens risk undermining our
12 Constitution's core values.

13 The Constitution is for all of us. Ensuring that all
14 Americans are able to vote and have their vote counted
15 should be an issue of concern to Democrats and Republicans.
16 It should be a matter of conscience for all of us regardless
17 of what political party we belong to. That is how it was 6
18 years ago when Members of Congress, Republicans and
19 Democrats, stood together on the Capitol steps to reaffirm
20 our commitment to full democratic participation when we
21 reauthorized the key provisions of the Voting Rights Act of
22 1965.

23 Our work in 2006 to reinvigorate and reauthorize the
24 Voting Rights Act stood in stark contrast to the tremendous
25 resistance and bitter politics which met the initial

1 enactment of that landmark law. And the Committee played a
2 key role. After nearly 20 hearings in this Committee and
3 the House Judiciary Committee, we found that Section 5 of
4 the Voting Rights Act continues to be an effective and
5 necessary tool for protecting voting rights against modern-
6 day barriers to voting. The legislation contained specific
7 findings about the need for reauthorization and concluded
8 that without reauthorization the gains we have made would be
9 undermined. Our efforts reached completion when President
10 Bush signed the bill into law after a unanimous vote in the
11 Senate and nearly unanimous vote in the House.

12 The Supreme Court got it right 3 years ago when it
13 upheld a challenge to the constitutional authority of
14 Congress to reauthorize Section 5. Next year, the Supreme
15 Court is going to have a similar challenge. Neither the
16 words of the Constitution nor the importance of these
17 critical provisions for protecting the right to vote has
18 changed in the last 3 years. Under the specific words of
19 the 14th and 15th Amendments, Congress has the power to
20 remedy discrimination and enforce these Amendments by
21 enacting laws that address racial discrimination in
22 connection with voting. We did that virtually unanimously 6
23 years ago.

24 The Voting Rights Act transformed America by ushering
25 the Nation out of a history of discrimination into an era of

1 greater inclusion. So we cannot turn away from our
2 commitment to the right to vote for all Americans, every
3 single American, Republican, Democrat, Independent, no
4 matter who they are.

5 I thank the witnesses for being here, and I am going to
6 turn to Senator Grassley, but I do want to mention again
7 what a great service Senator Durbin did in holding these
8 field hearings. They were extremely important. And I know
9 Senator Nelson was there in Florida and is here today.

10 Senator Grassley?

11 OPENING STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR
12 FROM THE STATE OF IOWA

13 Senator Grassley. Thank you, Mr. Chairman, and also to
14 all of our witnesses. This is a very important hearing
15 because voting is a vital part of citizenship and a right of
16 citizenship. It seems to me today that in any election or
17 in any discussion of voting rights, the term "suppression"
18 on the one hand or "disenfranchisement" on the other are
19 thrown about, sometimes in a cavalier fashion. That
20 approach is not helpful to protecting voting rights.

21 The history of voting in this country was expanded with
22 great effort and sometimes with great bloodshed. Those who
23 oppose expanding the franchise to our fellow citizens
24 sometimes use force and trickery. Comparing common-sense
25 voter ID requirements, which enjoys the support of three-

1 fourths of the electorate and even a majority of the
2 Democrats, to poll taxes or worse trivializes the sufferings
3 of millions of Americans who were denied the right to vote.

4 We also hear that voting should be expanded in any way
5 possible and the fewer the restrictions on voting the
6 better. We should never trivialize efforts to expand the
7 voter rolls, but we should make sure that those people that
8 get on the voter rolls are entitled to be there.

9 But fraud does exist. It is a fact of life. And it
10 will be discussed at this hearing, and it will get worse if
11 the only response is denial.

12 The States are as justified in taking measures to deter
13 potential fraud as to prosecute actual fraud. Earlier this
14 year, the Pew Center on the States issued a report that
15 found that there are 24 million voter registrations in this
16 country that are no longer valid or are inaccurate. Who can
17 justify that? It concluded that there are almost 3 million
18 individuals who are registered to vote in multiple States.
19 Who can justify that? Tens of thousands are registered to
20 vote in three or more States. Who can justify that?

21 The study also identified close to 2 million dead
22 people on the voter rolls. Who can justify that? NBC News
23 found 25,000 names of likely deceased voters on California
24 rolls. Who can justify that? Some voted years after they
25 died. One woman who died in 2004 voted in 2008 and 2012.

1 Who can justify that? A man who died in 2001 has voted
2 eight times since 2005. Who can justify that?

3 The New York Times recently wrote that, "In Florida,
4 absentee ballot scandals seem to arrive like clockwork."

5 I am pleased that two Secretaries of State are with us
6 today. I welcome Iowa's Secretary of State, Matt Schultz.
7 State election officials are well versed on the procedures
8 that are needed to run fair elections. Conscientious State
9 officials, such as my Secretary of State, have sought to
10 remove non-citizens from the voter rolls. Federal officials
11 did not assist them in ensuring that legal votes are not
12 diluted by the counting of votes from ineligible voters. In
13 fact, the Department of Homeland Security did all it could
14 to prevent maintaining the integrity of voting rolls.

15 We will hear that turnout rises when ballot integrity
16 is fostered. States have a fair amount of discretion in how
17 they choose to run elections. Early voting has grown in
18 popularity, but there is a cost even beyond the lack of a
19 common civic engagement on election day.

20 I look forward to this hearing and hope that we get
21 answers to these questions. But circumstances could change
22 or new arguments or deliberations could lead someone to
23 later wish to have voted differently. That is one of the
24 issues with early voting. There should not be a one-way
25 ratchet in which States that experiment with loosening

1 voting rules can never try another approach. Of course,
2 apparently neutral voting changes can hide bad motives.

3 I voted to reauthorize the Voting Rights Act. In fact,
4 I remember as a new member of this Committee in 1981 when
5 the reauthorization was up, I think for the first time, I
6 went to Senator Biden and said, "I would like to help you."
7 He probably said he wanted help. But at the time, you know,
8 Republicans had just taken over the Senate. Everybody
9 thought we were not going to reauthorize it. And Senator
10 Biden said--

11 Chairman Leahy. You were a stalwart.

12 Senator Grassley. Okay. I want to finish this story.

13 [Laughter.]

14 Senator Grassley. I do not think he believed me, but 4
15 or 5 months later, as the bill was going through the Senate,
16 he says, "You know, you were true in your wanting to help us
17 reauthorize this," because voting is the basis of our
18 representative system of Government and ought to be
19 preserved for all people. But nobody's vote should be
20 diluted by people that are not eligible to vote voting.

21 I yield the floor.

22 Chairman Leahy. Well, thank you very much, and you
23 were a stalwart then, and, again, one of the reasons why
24 Senator Grassley and I have been such good friends all these
25 years.

1 I have to go to the floor to manage an appropriations
2 bill. I am also on the Appropriations Committee. And
3 Senator Durbin has agreed to take over the hearing, and we
4 are going to have statements for the record from Senator
5 Warner on voting problems in Virginia and also from other
6 organizations. Those will be placed as part of the record.

7 [The information follows:]

8 / COMMITTEE INSERT

1 Chairman Leahy. Senator Durbin has been such a
2 stalwart on this, and I wonder, Senator Durbin, if you would
3 take my place here in the chair. And, Senator Grassley,
4 thank you as always.

5 Senator Durbin. I think you are a stalwart, too,
6 Senator Grassley.

7 [Laughter.]

8 OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR
9 FROM THE STATE OF ILLINOIS

10 Senator Durbin. Thank you all for being here, and I am
11 just going to make a brief opening statement and invite my
12 colleagues if they would like to do the same.

13 I see Senator Nelson here, and I can recall going to
14 Tampa, Florida, with Senator Nelson with a hearing of our
15 Subcommittee on the Constitution and Civil Rights. And if
16 you will recall, the first panel of experts that we had from
17 your home State of Florida were election officials,
18 Democrats and Republicans. And the first question I asked
19 them was: What was the evidence of voter fraud and vote
20 abuse that you believe led to these changes in the law
21 restricting opportunities to vote in Florida? And they said
22 there were none. There were none. And I asked them if
23 there were prosecutions of voter fraud in Florida that
24 caused a scandal that led to this, and they said, no, there
25 were not. It turns out there were almost none when it came

1 to actually prosecutions.

2 I did the same thing in Ohio with Senator Brown in
3 Cleveland, the same witnesses of Ohio election officials,
4 same questions, same answers. And this is what I have
5 concluded. It has come down to this: Elections in America
6 are supposed to be about a contest between candidates with
7 voters making the ultimate judgment. Instead, in too many
8 States, elections have become contests between voters and
9 special interest groups like ALEC which are hellbent on
10 limiting the right of Americans to vote. And look what
11 happened during this last election, things that I think need
12 to be changed and are embarrassing to us.

13 How can we be satisfied when our fellow citizens stand
14 in line for 7 hours to vote until 2:30 in the morning? Does
15 it make sense for State legislatures to reduce early voting
16 opportunities and the flexibility many working Americans
17 need to exercise their right to vote? How can we watch laws
18 being passed in legislatures requiring identification which
19 the legislators know full well that hundreds of thousands of
20 people will never be able to obtain in time to vote?
21 Shouldn't we be disappointed by the increasing number of
22 provisional ballots issued and the fact that a
23 disproportionate number of those provisional ballots were
24 given to minority voters in the United States of America?
25 Is it really necessary to threaten high school teachers with

1 criminal conviction and thousand dollar fines just for
2 offering to help students register to vote?

3 That was the reality of this election cycle. That is
4 the challenge to us. I know there are many other things I
5 can speak to, but I do believe we have got to be honest in
6 this coming Congress. I believe that when it comes to
7 Federal elections, we have a Federal responsibility to make
8 sure that qualified voters do not have obstacles thrown in
9 their paths. And to those who will, I hope you took a
10 lesson from November 6th. There were people who stood there
11 for 7 hours to defy you, to tell you that every obstacle you
12 threw in their path was another challenge for them to stand
13 and vote and be counted, whatever the time, whatever the
14 cost. Thank goodness they did. It was a reaffirmation of
15 who we are as Americans.

16 Senator Whitehouse?

17 OPENING STATEMENT OF HON. SHELDON WHITEHOUSE, A U.S.

18 SENATOR FROM THE STATE OF RHODE ISLAND

19 Senator Whitehouse. Thank you, Chairman. I will just
20 speak very briefly. I am delighted that we are having this
21 hearing. The right to vote is perhaps the basic American
22 right. It is the anchor of our democracy, and,
23 unfortunately I believe it is being challenged. I think the
24 modern-day Republican Party has a problem, which is that
25 most of the goals of the party are ones that Americans do

1 not support. And so they have to resort to strategies to
2 try to push their agenda that allow them to get around the
3 problem that most Americans do not support the radical Tea
4 Party agenda. Those include using hostage theory-type
5 negotiating tactics in the legislature. We saw that with
6 the debt limit. We are seeing it right now with the fiscal
7 cliff. "Unless you give us things that the American public
8 does not want, we are going to do something worse to the
9 country" is fundamentally the threat there. And we have
10 seen it with voter suppression. We have seen it over and
11 over with voter suppression, election after election with
12 voter suppression. And I have the greatest respect and
13 admiration for the Ranking Member, but I do think that
14 "voter suppression" is actually the appropriate term to use.

15 As a former prosecutor, we sometimes look at the
16 question of motive when you are looking at--it is only one
17 element, but you do look at motive, and the motive, I think,
18 has long been established by the Republican Party in the
19 voter caging cases in which they have actually been put
20 under court order to stop, cease and desist the practice of
21 trying to clear voters off the rolls through voter caging
22 efforts directed at particularly minority communities.

23 So I think this is a very live issue. I think it is a
24 very important issue. It is vital to our democracy, and I
25 am delighted that we are having this hearing where not only

1 my view but the distinguished Ranking Member's views and
2 others' can all be ventilated here.

3 Senator Durbin. Senator Coons?

4 OPENING STATEMENT OF HON. CHRISTOPHER COONS, A U.S.
5 SENATOR FROM THE STATE OF DELAWARE

6 Senator Coons. Thank you, Senator Durbin. Thank you
7 for the opportunity to join you in this important hearing
8 today.

9 Like all of us, I watched the outcome on the night of
10 the election and then for days afterwards with a sinking
11 heart and with a growing concern. As someone who treasures
12 the right to vote and who believes, as I know all of us do,
13 Republican and Democrat, that it is one of the most
14 fundamental civil rights in the United States, what we have
15 seen is the steady whittling away of the opportunity to
16 actually exercise that right in meaningful ways. In the
17 last election and after the last several elections, this is
18 of grave concern to me.

19 Now, there are number of bills that have been
20 introduced. I am a sponsor of one. A number of you are
21 cosponsors, Senator Gillibrand, Senator Boxer; there are a
22 number of others. Some seek, as mine does, to inspire a
23 competition between States in partnership with the Federal
24 Government to improve timeliness, access, accuracy. Others
25 mandate a Federal standard. I look forward to hearing from

1 this range of witnesses today about the real impact on the
2 ground, its impact on access to the ballot, its impact on
3 outcomes, and the questions that it raises in my view about
4 the Voting Rights Act. We do not yet know the Supreme
5 Court's path, but I think regardless of what happens in the
6 upcoming Supreme Court case, this Committee, this Congress,
7 has a duty, in my view, to reauthorize, to strengthen, and
8 extend the Voting Rights Act in a way that takes into
9 account the very real concerns about voting and accessing
10 the right to vote in this country that this most recent
11 election brought forward.

12 Thank you.

13 Senator Durbin. Thanks, Senator Coons.

14 We welcome our colleague, Senator Bill Nelson. Bill
15 has just gone through an election contest in a State where
16 this was an issue, and, Bill, please submit your testimony
17 and give us a few words here to start our hearing.

1 STATEMENT OF HON. BILL NELSON, A UNITED STATES
2 SENATOR FROM THE STATE OF FLORIDA

3 Senator Nelson. Mr. Chairman, thank you for your
4 leadership. Thank you for coming to Florida so that you
5 could receive direct testimony. You did that early in this
6 year, and we have just closed a very ugly chapter in Florida
7 political history, a chapter that occurred over the last 2
8 years, of an attempt to suppress the rights of voters, to
9 suppress that vote, and I want to bring you some proof
10 today.

11 First of all, I would like to submit my written
12 statement for the record. I would like to submit for the
13 record a summary of what I am about to say that came in the
14 Palm Beach Post in their Sunday, October 28, 2012, article,
15 an investigative piece. And, thirdly, I would like to
16 submit for the record the deposition of an Emmett Mitchell
17 IV, serving as the general counsel for the Florida
18 Republican Party, when he gave a deposition in the case
19 styled State of Florida v. United States of America, a
20 deposition that was given earlier this year, when the State
21 of Florida sued the U.S. Government for court determination
22 of the preclearance under the Voting Rights Act of 1965,
23 preclearance of five counties for discrimination; and,
24 further, sued the U.S. Government by questioning the
25 constitutionality of the 1965 Voting Rights Act.

1 In the discovery for that case, the testimony was taken
2 of this former general counsel of the Florida Republican
3 Party, and what I would like you to know is this key
4 individual who--with your permission, with the Committee's
5 permission, I would like to insert those documents in the
6 record.

7 In his testimony, given in April, Mr. Mitchell said--
8 and it is in the sworn testimony--that he was asked to draft
9 the original version of the legislation that became law. He
10 was asked to draft it by Republican Party leaders
11 specifically after consultations with Andy Palmer, then the
12 executive director of the Florida GOP; Frank Terrafirma,
13 head of the GOP State House campaigns; and Joel Springer,
14 head of the State Senator Republican campaigns; and in early
15 talks with executive director of the Florida GOP. And with
16 this full testimony, you will see that there was a
17 deliberate effort to change the election law of Florida in
18 order to do a number of things.

19 Now, it was not the first time that Mr. Mitchell's name
20 has surfaced with voting-related controversy, because back
21 in the infamous 2000 election, when there was the State of
22 Florida's efforts to purge possible felons from the voter
23 rolls, and that effort led to thousands of eligible voters
24 being turned away at the polls during that Presidential
25 election year because their names were removed from the

1 rolls, I said thousands of eligible voters who were purged.

2 This latest election law was introduced and passed in
3 spite of the vehement opposition of the elections officials
4 in the counties that conduct the elections, the supervisors
5 of election. They collectively, through their State
6 association and a wide array of other groups, had vehement
7 opposition to the proposed bill that became law, reducing
8 the number of early voting days from 14 to 8, which very
9 conveniently eliminated the Sunday voting before the Tuesday
10 election, which Professor Dan Smith from the University of
11 Florida testified at your hearing in Tampa, in fact, that
12 his investigation, his university investigation, found that
13 there were two particular groups that utilized in the
14 history of Florida early voting over the previous decade
15 Sundays as the time that they voted: one was African
16 Americans, and the other was Hispanics. That was one thing
17 the legislation did.

18 The law also made voting harder for people who had
19 moved from one county to another and had a different
20 address, because when they showed up to their new voter
21 registration, if they did not have in their documentation,
22 such as their driver's license, which likely they had not
23 updated from their old address, if it was a different
24 county, they were not allowed a ballot. They were given a
25 provisional ballot, and we know from the 2008 election of

1 the provisional ballots cast, one-half of them in 2008 were
2 thrown out.

3 Now, as a result of the new voter suppression law--you
4 have already stated it, Mr. Chairman--long lines, an
5 avalanche of provisional ballots, court challenges, all of
6 it has come to pass. You are going to have to draw your own
7 conclusions, Mr. Chairman and this Committee, but it is
8 pretty straightforward for the senior Senator from Florida.
9 Florida's 2011 election law changes were politically
10 motivated by the documents that I submit, and they were
11 clearly designed to disenfranchise likely Democratic voters
12 and not, as the Republican sponsors in the legislature
13 contended, to prevent voter fraud. You will see in the
14 documentation where Mr. Mitchell, when asked directly, "Do
15 you think that voter fraud is a problem?" he says no. When
16 asked, on voter registration that eliminated organizations
17 like the League of Women Voters for a year and a half to
18 stop their registration of voters because it changed the
19 previous law from 10 days to turn in the names to 48 hours,
20 which also added a huge fine for the person collecting the
21 signatures if they did not get it in in 48 hours--by the
22 way, 48 hours included Saturdays and Sundays. And when
23 asked in this deposition, "Did, in fact, you think that 48
24 hours was long enough?" he says no. He felt comfortable
25 with the 10 days.

1 And so, Mr. Chairman, I thank you for the opportunity
2 that I can bring this documentation to you, setting the
3 stage for testimony that will follow me by the panel. And
4 do not forget that what I am telling you about that happened
5 in Florida took place against a backdrop of a broader
6 Republican-led campaign to restrict voting in at least a
7 dozen States. And those were States that were controlled by
8 the Republicans, and they approved new obstacles to voting
9 as part of a campaign that was linked to the American
10 Legislative Exchange Council, ALEC, which receives
11 substantial funding from the Koch brothers.

12 And so, Mr. Chairman, I conclude by saying that
13 singling out Americans, stopping those or trying to stop
14 those, as they failed in Florida because of the 7 hours that
15 they stood in line that you already noted, and trying to
16 stop them from going to the polls, this is against the
17 American way. It is against one of our most precious
18 rights, and it is against what is guaranteed to us by the
19 Constitution of the United States.

20 Mr. Chairman, I thank you for the privilege of being
21 here.

22 [The prepared statement of Senator Nelson follows:]

23 / COMMITTEE INSERT

1 Senator Durbin. Thank you, Senator Nelson. The
2 documents you have referred to will be made part of the
3 record. We appreciate your testimony and your continuing
4 interest in this issue.

5 [The documents follows:]

6 / COMMITTEE INSERT

1 Senator Durbin. I now would like to call the first
2 panel of witnesses, if they would please come forward and
3 stand for the oath, the traditional, customary oath that is
4 administered in these hearings before the Judiciary
5 Committee. Please raise your right hand. Do you affirm
6 that the testimony you are about to give before the
7 Committee will be the truth, the whole truth, and nothing
8 but the truth, so help you God?

9 Mr. Crist. Yes.

10 Mr. Schultz. Yes.

11 Ms. Cobb-Hunter. Yes.

12 Mr. Bennett. Yes.

13 Ms. Perales. Yes.

14 Senator Durbin. Thank you. Let the record reflect
15 that the witnesses all answered in the affirmative, and I am
16 going to start with Governor Charlie Crist. He served as
17 Governor of the State of Florida from 2007 to 2011. Under
18 Governor Crist's leadership, Florida passed a number of laws
19 relating to voting, and clearly Florida has been front and
20 center as the beginning of our discussion in this Committee
21 today. We welcome your testimony. Your entire written
22 statement and any documentation you would like to submit
23 will be made part of the record, without objection. So
24 please proceed, Governor.

1 STATEMENT OF THE HONORABLE CHARLES CRIST, JR.,
2 FORMER GOVERNOR OF FLORIDA, ST. PETERSBURG,
3 FLORIDA

4 Mr. Crist. Great. Thank you very much, Mr. Chairman,
5 Ranking Member Grassley, and thank you, members of the
6 Judiciary Committee, for inviting me to testify today on
7 what is the most fundamental of rights for our fellow
8 Americans--the right to self-determination through voting.

9 Quite literally, we are here today because just over
10 236 years ago, 56 brave American patriots signed away their
11 lives by declaring independence from Great Britain in the
12 name of all who lived in the colonies. At the core of their
13 statement--our Declaration of Independence--"We hold these
14 truths to be self-evident, that all men are created equal,
15 that they are endowed by their Creator with certain
16 inalienable rights, among these are life, liberty, and the
17 pursuit of happiness, that to secure these rights
18 governments are instituted among men"--embodies the simple
19 principle that everyday Americans, the people who we all
20 represent, hold the power; that government is truly for the
21 people, by the people, and not the other way around.

22 In fairness, they did not get it totally right at the
23 beginning. Far too many Americans were initially denied the
24 right to vote, and far too many more died in the ensuing
25 battles to ensure that every American adult would have the

1 right to participate in self-determination. But throughout
2 the history of this great Nation, whether through laws or
3 conflicts, America has always taken steps forward to make
4 voting easier and more accessible--well, until this year.

5 For a good part of my adult life, I was employed in the
6 service of the people of the great State of Florida, a State
7 that has had more than its share of voting drama. For four
8 of those years, I had the truly humbling privilege serving
9 as Florida's Governor, and during those 4 years, we
10 undertook some important steps to make it easier for
11 Floridians to vote.

12 We eased the State's vote-by-mail laws to make it
13 easier for Floridians to choose to vote from the comfort of
14 their home.

15 We instituted a standard 14 days of in-person early
16 voting.

17 We made paper ballots mandatory to ensure that there
18 would be a record in the case of a recount.

19 We streamlined the system so Floridians who had paid
20 their entire debt to society could regain their right to
21 vote and have their rights restored.

22 And when, during the historic election of 2008, long
23 lines at early voting sites led to some Floridians waiting
24 many hours to cast a ballot, I as Governor signed an
25 executive order extending early voting hours so that no

1 Floridian would be faced with an unnecessary wait at the
2 polls. In the end, some 54 percent of Floridians cast a
3 ballot before election day in 2008. And thanks to the steps
4 we had taken, despite a record 8.3 million votes cast that
5 year, we knew the outcome of the State election before the
6 11 o'clock news.

7 Unfortunately, the last few years in Florida have not
8 been so forward thinking. In 2011, the State legislature
9 voted for and Governor Scott signed a massive election law
10 designed, I believe, to make it harder for some Floridians
11 to legally vote, and designed to encourage a certain
12 partisan outcome. The law, among other things, put
13 ridiculous restrictions on the rights of everyday law-
14 abiding Floridians to register their fellow citizens to vote
15 and reduced the number of early voting days from 14 to 8--
16 and under the law before the Justice Department demanded
17 changes, could have reduced early voting hours to as few as
18 48 in some of our counties. Furthermore, changes to the law
19 made it harder for voters who went to the wrong precinct to
20 cast a legal vote, which when combined with budget cuts in
21 many counties that reduced the number of election day
22 polling locations, resulted in unnecessary confusion and
23 suppression on election day. In addition, the State tried
24 to purge nearly 200,000 legal Floridians from the polls.
25 Thankfully, public pressure as well as questions from the

1 Justice Department, forced the State to back down.

2 The outcome of these decisions was quite obvious.
3 Florida, which 4 years earlier was a model for efficiency,
4 became once again a late night TV joke. Voters who wanted
5 to vote early were frequently subjected to lines of 3 and 4
6 hours; and as Governor Scott refused to take action to ease
7 the lines, in some cases those lines extended to 6 and 7
8 hours. Election day confusion led to horrifying lines again
9 on election day itself, which played a role in Florida
10 remaining in the undecided category until Thursday, some 2
11 days after the last ballot was cast. Thankfully, this time
12 the Presidency did not hang in the balance.

13 Senators, as you spend time thinking about how we can
14 make voting easier and more accessible, I would encourage
15 you to think long and hard about establishing some national
16 standards, standards that would ensure lengthy in-person
17 early voting, as well as common-sense provisions.

18 And I leave you once again with the words of our
19 Founding Fathers: "Governments are instituted among men
20 (and women), deriving their powers from the consent of the
21 governed." Ladies and gentlemen, we work for them. We
22 offer ourselves to their service, and they choose. And as
23 any of us knows who has lost well know, we do not always
24 like the outcome. But that is how this works. In the end,
25 America wins and democracy thrives when more people vote.

1 Thank you again for the invitation. I look forward to
2 the discussion.

3 [The prepared statement of Mr. Crist follows:]

1 Senator Durbin. Thanks, Governor.

2 Our next witness is the Iowa Secretary of State, Matt
3 Schultz, elected to office in 2010 as the youngest Secretary
4 of State in the country, currently serving his first term.
5 He was elected to public office in 2005 as a city councilman
6 in Council Bluffs, where he was re-elected and served for a
7 total of 5 years.

8 Secretary Schultz, thank you for coming, and please,
9 any written testimony that you have will become a part of
10 the record, and I would like you to take 5 minutes or
11 whatever you can use to give us your thoughts on this issue.

1 STATEMENT OF THE HONORABLE MATT SCHULTZ, SECRETARY
2 OF STATE OF IOWA, DES MOINES, IOWA

3 Mr. Schultz. Thank you, Mr. Chairman. As you stated,
4 my name is Matt Schultz, and I am the Secretary of State of
5 Iowa. I do appreciate the opportunity to testify before
6 your Committee today. I especially want to thank Senator
7 Grassley for extending the invitation to appear before the
8 Committee.

9 I was elected to the office of Secretary of State in
10 2010. Fighting for election integrity in Iowa was a
11 cornerstone of my campaign.

12 It seems clear that a lack of confidence in the
13 integrity of our elections is one of the reasons people do
14 not vote. Some believe their votes do not matter, and that
15 belief is a true cause of voter suppression across this
16 country.

17 We have seen that measures adopted to protect the
18 integrity of elections, such as voter identification laws,
19 have actually led to an increase in voter participation.

20 Opponents of these measures frequently claim that laws
21 meant to enhance election integrity are suppressing the
22 vote. Yet they offer no evidence to support their claims,
23 only theories often cloaked in political rhetoric.

24 The truth is that when election officials take steps to
25 secure the integrity and safety of the ballot box,

1 confidence in the outcome rises, and voter participation
2 increases.

3 Iowa is nationally known for having a model election
4 system. However, as with any system, there is room for
5 improvement, and I have been advocating for those
6 improvements for the past 2 years. One of my significant
7 initiatives in this area involves an agreement with the Iowa
8 Department of Public Safety to have a special agent from the
9 Iowa Division of Criminal Investigation assigned to
10 investigate election misconduct.

11 The DCI agent is conducting multiple investigations
12 into absentee ballot fraud, voting by individuals who are
13 ineligible, and double voting. Since August of 2012,
14 charges have been filed in eight election misconduct cases
15 based on information received from my staff, our local
16 election officials, and members of the public. Anyone who
17 says that voter fraud does not exist should look at the
18 numbers that have been produced in a few short months. We
19 all know that criminal investigations take time, and we
20 expect many more charges related to election misconduct to
21 be filed in the coming months.

22 In our efforts to ensure election integrity, my office
23 has taken several steps to maintain accurate voting lists in
24 order to prevent people from taking advantage of loopholes
25 in our election system. First, Iowa is one of numerous

1 states participating in the Kansas Project, the purpose of
2 which is to identify voters who may be registered or voting
3 in more than one State.

4 Second, Iowa matched voter registration records with
5 death records from the Social Security Administration. More
6 than 3,000 individuals were identified who were deceased and
7 registered to vote.

8 Finally, my office compared a list of non-citizens with
9 a driver's license to Iowa's voter registration database.
10 This comparison resulted in the unfortunate discovery that
11 Iowa potentially had thousands of non-citizens who were
12 registered to vote and over a thousand that may have cast
13 illegal ballots.

14 In determining how to proceed in light of this
15 information, I recognized the delicate balance between the
16 need for integrity in our elections and the fundamental
17 right of voters to participate in the electoral process.
18 Thus, it was important to proceed with the utmost caution to
19 ensure that no citizen's right to vote was improperly
20 challenged.

21 As such, my office attempted to work with the Federal
22 Department of Homeland Security over several months to
23 develop a system that would enable us to enact appropriate
24 measures in dealing with this issue. We realized it was
25 likely that some of the individuals identified during this

1 process subsequently might have become naturalized citizens
2 of the United States.

3 Therefore, a vital part of our effort was an attempt to
4 gain access to the Systematic Alien Verification and
5 Entitlements (SAVE) database. Our intent was to use SAVE in
6 order to determine if those individuals who were identified
7 as being non-citizens were indeed still non-citizens.

8 Throughout this process, I have worked with our
9 Democratic Attorney General, Tom Miller, in a bipartisan
10 manner to ensure that Iowa maintains the delicate balance
11 between voters' rights and election integrity.

12 While some States have found this balance difficult to
13 navigate, in Iowa we have worked hard to achieve this
14 result. Attorney General Miller has supported my efforts
15 and recently said that his goal, my goal, is zero voter
16 fraud, zero voter intimidation.

17 Critics of this bipartisan effort to prevent non-
18 citizens from illegally voting continually argue that voters
19 are being suppressed. I am pleased to sit before you and
20 report that Iowa had the largest voter turnout in our
21 State's history. This shows that our election integrity
22 efforts did not have a suppressing effect in Iowa. That is
23 a result of working together across party lines.

24 Again, thank you Mr. Chairman and members of the
25 Committee for the opportunity to testify today. I will be

1 happy to answer any questions that you may have.

2 [The prepared statement of Mr. Schultz follows:]

1 Senator Durbin. Thank you very much, Secretary
2 Schultz. We appreciate your testimony, and we will have
3 some questions.

4 I would like to now recognize the Honorable Gilda Cobb-
5 Hunter, who is here today representing the South Carolina
6 House of Representatives, where she has been a
7 representative from Orangeburg County, District 66, for over
8 21 years. Ms. Cobb-Hunter is also the first African
9 American woman in Orangeburg County ever elected to
10 statewide office.

11 Thank you for joining us today. The floor is yours,
12 and any written testimony will be made part of the record.

1 STATEMENT OF THE HONORABLE GILDA COBB-HUNTER,
2 HOUSE OF REPRESENTATIVES, STATE OF SOUTH CAROLINA,
3 COLUMBIA, SOUTH CAROLINA

4 Ms. Cobb-Hunter. Good morning, and thank you, Senator,
5 and to Ranking Member Grassley and all other members of this
6 Committee. I really appreciate you all having this hearing.

7 I am here really to paint a face on a lot of
8 information that you have read to hopefully make this real
9 so that you understand as you deliberate the importance of
10 the Voting Rights Act, that there are actual people who are
11 affected by this.

12 I am here in my capacity as a veteran legislator to
13 talk specifically about South Carolina and about the
14 implementation of the Voting Rights Act and how I want to
15 offer two examples to show how important it is.

16 First, of course, are efforts to enact a voter ID bill.
17 The Ranking Member talked about a common-sense voter ID
18 bill, and I assure you those of us in South Carolina who
19 opposed this legislation agree that common-sense voter ID
20 bills are certainly things that are important. We would
21 argue that the legislation that passed in South Carolina was
22 not a common-sense bill, and I would like to tell you why.

23 I represent a rural area. I represent a district that
24 is 63 percent black. Over 97 percent of the students are on
25 free and reduced lunches. A lot of my constituents were

1 born on farms. They were delivered by midwives. It sounds
2 easy to say a free ID, as was offered by our State. It is
3 more complicated than that. There are a number of documents
4 that are required to get a free ID, quote-unquote--a birth
5 certificate, for example. When you live in a rural
6 community, it is very difficult, if you are 70 miles from
7 the county seat--and that is 70 miles round trip--to have to
8 pay someone to take you to the health department, to the DMV
9 office, or wherever to get that. So there are barriers
10 there that I think is important for us to keep in mind.

11 I am here because, were it not for Section 5 of the
12 Voting Rights Act, this notion of reasonable impediment that
13 is a part of the South Carolina statute would still be
14 there. It was only because of the preclearance that is
15 required under Section 5 of the Voting Rights Act and it was
16 only because South Carolina was forced to have this aired
17 before a three-judge panel that we got some expansion of
18 that definition at the trial.

19 It is important, in my opinion, to note that when we
20 talk about South Carolina, we need to understand the
21 importance of the patterns and history of racism and
22 discrimination that unfortunately we are still suffering.
23 There are a number of things that suggest that we live in a
24 post-racial society. I would respectfully suggest to you
25 that that is not the case in South Carolina.

1 I want to just kind of bring closure to my comments by
2 suggesting to you that I have submitted written testimony
3 that expands what I think are the important points, and I
4 have chosen to take this opportunity to just talk with you a
5 bit about the district, the people who were there.

6 I assure you that communities of color in South
7 Carolina and across this country take the right to vote very
8 seriously. There is no sentiment in my community or any
9 other community that I am aware of for tolerating voter
10 fraud.

11 I would point out to you, Mr. Chair and other members
12 of this Committee, that in South Carolina, when we debated
13 this legislation and the question of voter impersonation
14 using an ID was posed, there was not one example that was
15 cited, and much with what Senator Nelson talked about in the
16 State of Florida.

17 So I encourage you to recognize the importance of the
18 Voting Rights Act, to recognize that it has a function of
19 preventing discrimination, hopefully before it takes root,
20 and in the case in South Carolina, it most certainly did
21 that. I do not think it is too strong language to say that
22 the legislation was a poll tax as implemented in our State.

23 Thank you for the opportunity.

24 [The prepared statement of Ms. Cobb-Hunter follows:]

1 Senator Durbin. Thank you very much, Representative.

2 We appreciate your testimony, and there will be some
3 questions to follow.

4 Our next witness is Ken Bennett. He has served as
5 Arizona's Secretary of State since 2009, previously served
6 as president of the Arizona State Senate for 4 years, and in
7 private business was the chief executive officer of GeoBio
8 Energy. He has a long bio that will be made part of our
9 record here, and we invite you now for your oral testimony
10 and to submit any written testimony that you would like for
11 the record.

1 STATEMENT OF THE HONORABLE KEN BENNETT, SECRETARY
2 OF STATE OF ARIZONA, PHOENIX, ARIZONA

3 Mr. Bennett. Thank you, Mr. Chairman and members, for
4 allowing me to be here today. I have submitted written
5 testimony and ask that it be accepted, but I am going to
6 speak more from the heart today and tell you a little bit
7 about what is going on in Arizona.

8 First, I would like to just take a moment and bring the
9 thoughts and prayers of Arizonans to the folks in
10 Connecticut. Having experienced not as large but a similar
11 incident a few years ago with Representative Giffords, who
12 sat next to me on the floor of the Senate, we know the
13 heartache, and our thoughts go out to them.

14 Even though the Secretary of State is the chief
15 elections official in Arizona, the real work mostly is done
16 at the county level. Within our 15 counties, we have county
17 recorders and election directors who are very bipartisan,
18 multi-partisan, and work across party lines within their
19 counties and across county lines to try to make sure that
20 every Arizonan who is eligible to vote gets to vote. We
21 have very dedicated people at the county level, and it is
22 kind of a misnomer to say that the chief elections official
23 is at the State and people get the idea that the State runs
24 elections. In Arizona, it is really the counties.

25 I think Arizona has been served very well by having

1 local officials elected by their friends and neighbors in
2 those counties and communities that actually conduct the
3 elections, and they are, more than anyone else, interested
4 in making sure that all of their citizens who are eligible
5 to vote get the right to do so and make it as convenient as
6 possible.

7 Elections in Arizona really happen in one of four
8 phases, and I will go briefly through each one. The first
9 phase is the voter registration process. We have a little
10 over 3.1 million registered voters in Arizona. That is down
11 slightly from a high point a couple years ago at a little
12 over 3.2 million. Most of that drop occurred up with
13 cleaning up of the rolls in 2011 per Federal and State
14 legislation. I know of no complaints or thoughts that
15 anyone was removed or purged--in fact, it was not a purge.
16 It was just a normal cleaning of the rolls that Federal and
17 State laws call for.

18 Arizona was the first State to allow online voter
19 registration. Almost 80 percent of our voter registrations
20 occur through that process. It goes through the Department
21 of Motor Vehicles.

22 We also allow what is called the Permanent Early Voter
23 List where voters can be on a list and be mailed a ballot
24 for every election that they are eligible to vote in without
25 having to request each time.

1 For the last 40 years, Arizona's voter participation in
2 elections has been very steady around the 75-percent level.
3 Again this year, we were at 74.6 percent, I think it was.

4 In 2004, the citizens of our State did pass a proof of
5 citizenship and ID at the polls legislation that we have
6 been implementing, and, you know, I would agree that our
7 fundamental first right is our right to vote. I think
8 closely behind it or maybe equal with it is the right to
9 know that our vote is not being canceled out or offset by
10 somebody who is not allowed to vote or eligible to vote.

11 The second part of our system is how candidates get on
12 the ballot. I do not think there is anything real unique
13 about Arizona. We had a couple of redistricting issues and
14 a couple of Congresspeople combined into the same district,
15 and we had some challenges there. But we worked all through
16 those.

17 The third phase in our system is how do we get the
18 ballots to the voters and get them back. In Arizona, about
19 two-thirds of our voters vote by mail, most of them on this
20 Permanent Early Voter List. The other third still enjoy
21 going to the polls. The voters rejected within the last 10
22 years a ballot proposition to go to all-mail elections. And
23 so we have about two-thirds that vote by mail, one-third
24 that go to the polls. This year we had a significant
25 reduction in the numbers who went to the polls and had to

1 come back to show ID. Those number of voters dropped by
2 almost half.

3 And then I see my time is quickly going away, so I will
4 go to the fourth phase of our election system. That is the
5 counting of the ballots. We focus on two things there:
6 accuracy and the inclusion of as many voters as possible. I
7 personally sat with officials and volunteers from both
8 parties in the counties working through processing ballots
9 and identifying when somebody has spilled something on their
10 ballot and the machine cannot count it. Tens of thousands
11 of ballots meticulously duplicated so that we can include
12 and count the ballot of every eligible voter.

13 And as far as accuracy, we had a unique situation, and
14 I will conclude very briefly. Two years ago, we had the
15 first recount of a statewide election in the State's
16 history. One of the ballot measures was losing by about 126
17 votes out of over 1.8 million votes cast for or against that
18 ballot measure. To make a long story short, as an
19 accounting graduate, I began to fear that when we did the
20 recount--which State law says you have to have a recount if
21 it is less than 200 difference between the winner and loser.
22 I realized that if we were 99 percent accurate in the
23 recount, we could be off by about 18,000 votes from the
24 first count. If we were 99.9 percent accurate, it would be
25 1,800, or 99.99 percent accurate, 180 still in excess of the

1 difference between the yeses and noes. When it was all said
2 and done, the vote total on the second recount changed by 66
3 votes out of 1.8 million. I think our accuracy percentage
4 was 99.9994 percent.

5 Our goal in Arizona is to have the best election system
6 in the world. We are on the way there. We are not perfect.
7 We have a lot of improvements that we can make, but we have
8 a lot of dedicated individuals from both parties that are
9 working hard to make sure that every Arizonan that is
10 eligible to vote can and does so.

11 Thank you, Mr. Chairman.

12 [The prepared statement of Mr. Bennett follows:]

1 Senator Durbin. Thank you very much, Mr. Bennett.

2 Nina Perales is vice president of litigation for
3 MALDEF, the Mexican American Legal Defense and Educational
4 Fund. She is well known in the civil rights community for
5 her work on voting rights, and her cases includes LULAC v.
6 Perry, a challenge to Texas' congressional redistricting,
7 which she led through trial and a successful appeal to the
8 U.S. something.

9 Ms. Perales, the floor is yours.

1 STATEMENT OF NINA PERALES, VICE PRESIDENT OF
2 LITIGATION, MEXICAN AMERICAN LEGAL DEFENSE AND
3 EDUCATIONAL FUND (MALDEF), SAN ANTONIO, TEXAS

4 Ms. Perales. Mr. Chairman, Ranking Member Grassley,
5 and members of the Judiciary Committee, thank you for
6 inviting me to testify today.

7 Today, Latinos constitute the largest racial minority
8 group in the United States. Over the same decade, the
9 number of Latino eligible voters--U.S. citizen adults--
10 increased from 13 million to 21 million.

11 As the Latino and other racial minority communities
12 have grown and expanded their share of the U.S. electorate,
13 some States have attempted to slow registration and
14 participation of new voters.

15 For example, Arizona adopted a new law in 2004 that
16 changed voter registration rules to require only new voter
17 registrants to provide documentary proof of U.S.
18 citizenship. Prop 200, as it is called, has had a broad
19 negative impact on voter registration across Arizona.
20 Following enactment of the law, over 30,000 individuals were
21 rejected for voter registration.

22 Prop 200 does impose special burdens on naturalized
23 U.S. citizens. Although registrants are encouraged to write
24 their driver's license number on the registration form,
25 naturalized citizens who obtained their driver's licenses

1 years earlier, when they were permanent legal resident
2 immigrants and, unbeknownst to them, were coded as
3 foreigners in the driver's license database, are flagged for
4 rejection of their voter registration applications. This
5 often forces them to have to register twice and sometimes
6 even register in person because the naturalization
7 certificate says on its face that it should not be
8 photocopied.

9 The Ninth Circuit, sitting en banc, invalidated Prop
10 200 as inconsistent with the National Voter Registration
11 Act. Arizona's appeal is now pending in the U.S. Supreme
12 Court.

13 Although Prop 200 states that its purpose is to combat
14 undocumented immigration, Arizona has not identified a
15 single instance in which an undocumented immigrant
16 registered or voted in Arizona.

17 In Texas, in 2011, the legislature enacted the
18 strictest photo voter ID law in the Nation. The law has not
19 gone into effect, however, because a Federal court in
20 Washington, D.C., concluded that it violated the Federal
21 Voting Rights Act.

22 Texas already has a voter ID requirement. The 2011 law
23 reduced the list of acceptable ID, eliminating, for example,
24 voter registration cards, birth certificates, student ID
25 cards issued from State universities, and employment

1 identification cards with photos. Although there is no
2 logical connection between citizenship and holding a
3 driver's license, during the enactment of the Texas voter ID
4 law elected officials consistently affirmed that a State-
5 issued photo voter ID was needed to prevent non-citizens
6 from voting.

7 In her testimony in the voter ID case, State
8 Representative Debbie Riddle, when asked about specific
9 incidents that she knew of of voter fraud, described one
10 incident in which she saw a Hispanic, Spanish-speaking woman
11 who needed assistance voting. Representative Riddle offered
12 this incident as an example of voter fraud, despite the fact
13 that she also testified she had no knowledge whether the
14 voter was a citizen or not, only that she was Hispanic.

15 In 2012, both Florida and Colorado launched voter
16 purges, claiming an urgent need to remove thousands--
17 thousands--of non-citizens from the rolls. In both cases,
18 the purges were based on the same flawed driver's license
19 database searches that were found by the Arizona Federal
20 court in 2008 to misclassify naturalized citizens as non-
21 citizens. Both purge efforts, after sending letters to
22 thousands of voters threatening to remove them from the
23 voter rolls for non-citizenship, diminished to less than 200
24 voters in each State. In terms of identifying actual non-
25 citizens, the outcome was predictably small.

1 In Miami-Dade, 13 registrants reported they were not
2 citizens, two of whom had voted. In Colorado, 14 voters
3 were removed from the rolls. None had voted.

4 The Texas 2011 redistricting also targeted Latino
5 voters. Despite the fact that Latinos constituted 65
6 percent of the State's overall population growth over the
7 past decade and was, therefore, the leading reason that
8 Texas gained four new congressional seats, the Texas
9 legislature enacted redistricting plans that intentionally
10 thwarted the growing Latino electorate. The plans for
11 Congress and House of Representatives were blocked by a
12 Federal court in Washington, D.C., on the ground that both
13 plans reduced minority political strength and that the
14 congressional redistricting plan was purposefully
15 discriminatory on the basis of race.

16 Although Latino registration and voting rates still lag
17 behind those of Anglos, Latino voters are steadily
18 increasing in number and achieving higher levels of voter
19 participation. State practices that seek to freeze in place
20 their current electorates and limit the entry of Latino
21 voters can run afoul of Federal law as well as the
22 Constitution and are fundamentally undemocratic.

23 Thank you for the opportunity.

24 [The prepared statement of Ms. Perales follows:]

1 Senator Durbin. Thank you very much for your
2 testimony.

3 I would like to ask the election officials here, Mr.
4 Bennett and Mr. Schultz, the following: If you believe--and
5 we all do--that voter fraud is, if not a crime, a serious
6 act that should be dealt with in terms of our policy and
7 laws, and if you believe that such cases should be
8 investigated and prosecuted because of the serious nature of
9 those cases, I would like for both of you to give me the
10 evidence in Iowa and Arizona of convictions for voter fraud
11 that have led to your changes in the law.

12 Mr. Schultz. Do you mind if I got first, Mr. Chairman?

13 Senator Durbin. Please.

14 Mr. Schultz. Thank you. I think that is a great
15 question, and I think it is a very difficult question in
16 some ways because not until now have we had resources to
17 even go after this.

18 Senator Durbin. I beg your pardon?

19 Mr. Schultz. Not until recently have we as the
20 Secretary of State's office had resources dedicated towards
21 an investigator to go and do investigations into these
22 crimes.

23 Senator Durbin. Excuse me, sir. You are saying that
24 the law was changed in Iowa even before the investigation
25 began?

1 Mr. Schultz. Well, let me back up. The law has not
2 been changed in Iowa. I would say Iowa--let me address some
3 of your concerns that you stated in your opening statement.
4 Iowa has 40 days of early voting. Our polls are open from
5 7:00 to 9:00 on election day. We do everything we can to
6 encourage people to go vote.

7 The question is then, when you have non-citizens who
8 are registered to vote and voting, you have potential people
9 double voting, you have absentee ballot fraud--

10 Senator Durbin. Do you have evidence of non-citizens
11 voting in Iowa?

12 Mr. Schultz. Yes, we have actually arrested--since
13 August 2012, six people have been arrested--

14 Senator Durbin. Six. How many have voted since--

15 Mr. Schultz. All of those who had voted.

16 Senator Durbin. No. I am saying of the total number
17 of voters since 2012.

18 Mr. Schultz. Well, it is a difficult question because
19 we have three--we identified 3,582 non-citizens who were
20 registered to vote, but we were not sure if they were still
21 non-citizens.

22 Senator Durbin. I am guessing that millions--millions
23 have voted?

24 Mr. Schultz. 1.6 million--

25 Senator Durbin. 1.6 million, and there were six cases.

1 Mr. Schultz. No. That is what we have so far. We
2 just started these investigations in August.

3 Senator Durbin. Well, let me ask Mr. Bennett that same
4 question. You have heard Ms. Perales' comments. It strikes
5 me that there are legitimate questions as to why, if voter
6 fraud is a serious issue, you have decided to only ask for
7 proof, a birth certificate, of new voters as opposed to all
8 voters.

9 Mr. Bennett. Well, I think that paints an incorrect
10 picture of what the voters passed in 2004. What they did is
11 grandfather anyone who had a State driver's license or a
12 State-issued ID before a certain cutoff. I think it was
13 1996.

14 Senator Durbin. I think that is what she said.

15 Mr. Bennett. So that essentially everyone was
16 grandfathered in, and then as new voters move around and
17 come in, they are asked to provide proof of citizenship.

18 As to the evidence of voter fraud, we have prosecuted
19 about 15 cases within the last 18 months or so of people who
20 were found to have voted in an election--these were all the
21 Presidential election of 2008, I believe it was--voters who
22 had been found to have voted in Arizona in an election that
23 they also voted in another State. We have counties that
24 report to us that they remove hundreds of voters from the
25 registration voter rolls monthly who report on forms that

1 are sent out to potential jurors that they are, in fact, not
2 citizens and cannot serve on a jury, but when those juror
3 questionnaires are reviewed by the county officials,
4 hundreds who are found to also be on the voter rolls have to
5 be removed from the voter rolls.

6 I do not know of any--

7 Senator Durbin. Fifteen have been prosecuted? You say
8 15 have been prosecuted?

9 Mr. Bennett. Fifteen have been prosecuted during the
10 last 18 months or so.

11 Senator Durbin. And how many voted, for example, in
12 the November 6th election in Arizona?

13 Mr. Bennett. About 2.3 million.

14 Senator Durbin. Ms. Perales, I would like you to take
15 this to the obvious question. We are not looking to justify
16 voter fraud, make it easy for those who are ineligible to
17 vote. We are trying to stop those obstacles and
18 intimidation of voters, which holds many people back who are
19 eligible. So how are we to deal with this question, do you
20 believe, in a fair fashion?

21 Ms. Perales. Thank you, Senator. What we have learned
22 through these efforts by the States, some of which have been
23 described here, is that there are very, very, very tiny
24 numbers, sporadic, isolated incidents of people being
25 registered when they are not eligible because of

1 citizenship. The numbers are very consistent across the
2 States, less than 10, less than 20. And Arizona, when it
3 had the opportunity to prove this in court, came up with
4 less than 20, most of whom were Canadians, by the way, for
5 some strange reason.

6 Senator Durbin. A serious problem.

7 [Laughter.]

8 Ms. Perales. And less than 10 who had voted. So we
9 know the numbers are very tiny, very consistently small--in
10 fact, so small that they are even smaller than the 99.9994
11 accuracy level that Secretary Bennett is rightfully proud of
12 in terms of the accuracy of counting ballots.

13 Contrast that with the efforts themselves where
14 thousands of letters have been sent to persons who have been
15 erroneously identified as non-citizens because of the use of
16 flawed driver's license databases. I have to take one small
17 issue with Secretary Schultz, who said he had identified
18 3,500 non-citizens using the driver's license rolls. He did
19 not. He identified 3,500 people who were non-citizens at
20 the time that they obtained their driver's licenses, and we
21 know that since that time and before they registered to
22 vote, the overwhelming majority--and perhaps all of them--
23 have become naturalized citizens.

24 So any State at this point that undertakes to accuse
25 people of non-citizenship based on driver's license rolls is

1 on notice that this is not correct and should not be done.
2 It is fundamentally unfair.

3 So, yes, are there tiny numbers--and Senator Grassley
4 did a wonderful job of describing also much greater numbers
5 of persons, for example, who are registered in more than one
6 State. And these things ought to be approached in a very
7 common-sense, fair way with very individualized looks at
8 people who might possibly be ineligible. But sending out
9 thousands of letters to people accusing them of non-
10 citizenship, telling them they will be thrown off the rolls
11 if they do not respond with paperwork within 30 days is not
12 the way to go about it.

13 Senator Durbin. Governor Crist, my time is up, but I
14 wanted to note one fact here. It is my information that
15 some 8.3, 8.4 million people cast votes in the Presidential
16 election in Florida, and the President's margin was about
17 74,000, which is a very, very small margin.

18 When I came down to Florida, the thing that I found
19 interesting was most of the legislative activity had been
20 focused on early voting and registration as opposed to
21 absentee voting.

22 Mr. Crist. Yes, sir.

23 Senator Durbin. Historically, we had testimony in
24 Florida that Republicans have used absentee voting much more
25 effectively than Democrats. Democrats have used early

1 voting.

2 Mr. Crist. I have seen it.

3 Senator Durbin. I will bet you have. If you were out
4 to stop voter fraud and believe that you have got to limit
5 early voting, would it not also stand to reason that you
6 would be making some limitations on absentee voting? And I
7 do not believe Florida did.

8 Mr. Crist. Well, yes, sir, to answer your question in
9 the affirmative. But I think that what all of us want are
10 free, open, and fair elections for everyone, and I think the
11 unfortunate thing that we have seen over the last couple of
12 elections is, through interest groups like ALEC, a concerted
13 effort to try to make it easier for one party to win over
14 another. And I think the greatest example of that, Mr.
15 Chairman, is the elimination in my State of the Sunday
16 voting before the Tuesday election. And my friend Senator
17 Nelson pointed this out in his opening testimony about the
18 fact that in two specific communities, generally you see a
19 historic tradition of citizens that are Hispanic or African
20 American take the opportunity, typically after church, on
21 that Sunday before the Tuesday election to go to the polls.
22 That was eliminated in my State in 2011. We had in 2008.
23 And what we did to adjust to that this year was organize a
24 "Souls to the Polls" effort two Sundays before the Tuesday
25 election, and it was pretty successful. But it pointed out

1 something else, that even when these road blocks are put in
2 place--and I was very proud of my fellow Floridians. They
3 at first I think were frustrated, but I think ultimately
4 became infuriated that somebody was daring to try to take
5 away their opportunity and put obstacles in place in front
6 of them for simply trying to exercise this precious right to
7 vote. And so in Florida, even though the race had already
8 been called for the Presidency, my fellow Floridians, as I
9 think you indicated, continued to stay in line after the
10 decision had been concluded because they were not going to
11 be denied their right to vote in that election, and God
12 bless them for that.

13 Senator Durbin. Thank you.

14 Senator Grassley?

15 Senator Grassley. Thank you very much. Thank you all
16 for appearing, and particularly my own Secretary of State
17 for coming, and my first question would be to my Secretary
18 of State, applauding your efforts to give non-citizens who
19 you thought were on the voter rolls that should not be there
20 notice and an opportunity to be heard before they were
21 removed from the rolls, and I think that our own Attorney
22 General, a Democrat, has thought your efforts were well-
23 meaning. But you have been unable, am I right, to proceed
24 fairly to remove ineligible voters because you have received
25 no cooperation from the Department of Homeland Security? So

1 I would like to give you an opportunity to describe your
2 request for assistance from that Department, their response,
3 and have they shown any concern that ineligible voters may
4 be diluting the votes of citizens?

5 Mr. Schultz. Thank you, Senator. I think it goes back
6 to in March, when we did this match--and I would be very
7 clear--of potential non-citizens. Unlike Florida and other
8 States, we did not ask to have these people removed, we did
9 not send any notices, because we recognized there was a
10 potential for these individuals, that they may have, when
11 they got their driver's licenses, been non-citizens and then
12 later became citizens and voted. And so we attempted to try
13 and get access to the SAVE database. U.S. Code is very
14 clear that we should have access to that information. And
15 so we started talking to SAVE and its representatives in
16 March and put our initial application in April, and then
17 there was a lot of back-and-forth until July when they
18 finally said that they would give us access to it. But then
19 we did not get access to it, and we still have not received
20 access to it.

21 Now, in all fairness, in late August we were sued by
22 the ACLU, but that did not prevent us from being able to get
23 access to the database. It was more of what we would be
24 able to do with it after that point. We still have not
25 received access to the database. The discussions have just

1 basically gone silent. And, you know, it is disappointing
2 because we are trying to do the right thing. We do not want
3 to accuse somebody who is a citizen of the United States
4 that they are not able to vote and that they are not a
5 citizen. That SAVE database gives us real-time information
6 on an individual's citizenship and would allow us to make
7 sure, of those 3,582, that we would be able to find out who
8 is a citizen and who is not. We do know at least six of
9 those individuals were not citizens because our Department
10 of Criminal Investigation did find that out through
11 investigative work, but that takes a lot of time. Had we
12 been able to get access to this information, we would have
13 been able to do this differently.

14 Senator Grassley. Governor Crist, the charge that the
15 Florida law suppressed voting and was designed to do so, it
16 is my understanding in Brown v. Detzner that the court
17 rejected that argument, finding that the law's voting
18 changes neither had the intent nor the effect of
19 discriminating on the basis, and that means the court
20 rejected the claim of voter suppression.

21 So isn't it the case then that the Federal court
22 rejected the argument of Floridians, and maybe your argument
23 as well, that the Florida law "resulted in the suppression
24 on election day"?

25 Mr. Crist. Perhaps by that interpretation, but I have

1 the experience of having been in Miami Gardens in Miami-Dade
2 County during early voting, as well as Aventura in Miami-
3 Dade County during early voting, and witnessing firsthand
4 the long lines that were created by the law that was passed
5 in my State in 2011 and signed by our current Governor.
6 There were lines in Miami Gardens, which is largely African
7 American, 3 and 4 hours people had to wait to vote in early
8 voting. And over in Aventura on the same afternoon, I saw
9 lines that were requiring people to wait 2-1/2 to 3 hours
10 for early voting. So I am not sure what the court was
11 looking at, but I know what I saw, and it was suppressive.

12 Senator Grassley. Thank you, Governor.

13 I would go to Secretary Bennett. I believe that the
14 voter ID laws are common-sense measures to prevent voter
15 fraud, so, Secretary Bennett, it is my understanding that
16 Arizona does have a voter ID law. From your own experience
17 and that in other States, has the adoption of voter ID laws
18 suppressed minority turnout? Or maybe I should say turnout
19 generally, but I think you ought to answer from the--

20 Mr. Bennett. Thank you, Mr. Chairman, Senator.

21 Actually, we have the highest number of registered Latino
22 voters in Arizona and as a percentage of our total voter
23 base now, 8 years after the adoption of Prop 200, as was
24 mentioned by Ms. Perales. So there is no evidence in
25 Arizona that voter ID or proof of citizenship in order to

1 register has had a negative effect on minorities. And the
2 only one--we do not collect ethnic data in any way on our
3 voter registration form. The only way we can really do
4 these studies is by exit polling or some of our larger
5 counties do Hispanic surname evaluation. From the Hispanic
6 surname evaluation, we have the largest percentage of Latino
7 voters of our population now, 8 years after Prop 200 went
8 in. We have the highest number of total Latino voters in
9 Arizona than we have ever had. And they are participating
10 at the polls in higher percentages than ever before.

11 Just 2 weeks ago, I met with two individuals, heads of
12 organizations, that did large Hispanic and Latino voter
13 registration drives in Arizona. Just between these two
14 organizations alone, they registered over 34,000 Latino
15 voters in a matter of weeks and a couple of months maybe
16 before the primary and general elections. And the voter
17 turnout is higher than it has ever been from that group.

18 Senator Grassley. Thank you all.

19 Thank you, Mr. Chairman.

20 Senator Durbin. Thank you.

21 Senator Coons?

22 Senator Coons. Thank you, Senator Durbin. I would
23 like to thank the whole panel for your testimony today and
24 for your determination to make sure that we have a free,
25 fair, open electoral system in the United States.

1 It seems to me that the core issue in this hearing is
2 one of balance, of understanding consequence and scale. As
3 Senator Durbin I think rather pointedly questioned the two
4 State election officials, voter integrity, vote integrity is
5 a critical issue. But you can only point to a handful of
6 instances where there are real demonstrated challenges. And
7 in my view, what we have heard in this hearing and in other
8 hearings and what I have read and observed, denial of access
9 to polling places, whether through very long lines or
10 through aggressive purges of the rolls or through a variety
11 of other tactical or technical means, has a significantly
12 greater impact on the actual ability to exercise the
13 franchise.

14 And in reality, a lot of this comes down to being
15 outcome determinative, as lawyers tend to say. When Florida
16 had an election in 2000 where the Presidential election hung
17 in the balance and the initial difference was, I think, 537
18 votes, you suddenly begin to focus a lot of attention on
19 these very minor--you know, 99.999 versus 99.9999 can
20 actually determine who is Governor, who is Senator, who is
21 President.

22 And so I think it is deserving of real thorough
23 attention to what the impact is on the ability to vote of
24 some of these very restrictive changes, and I was truly
25 disturbed and troubled by Senator Nelson's testimony and by

1 former Governor Crist's testimony about what may have
2 motivated some of the changes and decisions that may have
3 been taken in Florida and their impact on access to the
4 polls.

5 So if I might, with a first question to Governor Crist,
6 what do you view as the most important election
7 administration reforms that would actually sustainably and
8 successfully improve access to the ballot and ease of
9 voting?

10 Mr. Crist. Well, I think there are several things,
11 and, Senator, I appreciate the question. Number one, if you
12 would restore the early voting days from the now restricted
13 8 days back to 14, I think that would be a step in the right
14 direction.

15 I also think, as we chatted about earlier, the fact
16 that reopening that Sunday before the Tuesday election would
17 be honoring of a lot more people, candidly, and the practice
18 that they may want to participate in, in the fashion they
19 want to participate in it.

20 I also think that as it relates to voting by mail, the
21 new law in Florida passed in 2011 said that when people sent
22 in their mail ballot--and I am pretty sure I have got this
23 right--the only evidence that could be utilized to determine
24 that the person sending in the ballot was actually the one
25 purporting to do so was their signature on that ballot when

1 they sent it in and that it matched up with the signature at
2 the supervisor's office.

3 Well, if you are in a situation like my mother, who
4 last year, unfortunately, had a stroke--by the grace of God,
5 she is doing pretty well now, and literally, thank God for
6 that. But one residual that is lingering is that she is not
7 able to write with her right hand, and she is right-handed.
8 And so how in the world are you going to have your signature
9 match up with the signature that is on file with the
10 supervisor's office if you have suffered that difficulty.

11 So there are several things that I think are just
12 common sense: more time to vote, make it more convenient to
13 vote, appreciate that some people's ability to sign their
14 signature as they did before may have altered or changed,
15 and just be respectful to the voter, the people that we are
16 supposed to work for, and allow them to exercise this
17 wonderful opportunity and privilege that we have in America
18 to choose our leaders and have the chance to exercise that
19 right that so many have fought and died for in a common-
20 sense way.

21 Senator Coons. Well, thank you, Governor. One of the
22 things I have tried to contribute to the conversation here
23 in the Senate is a bill, the Fair, Accurate, Secure and
24 Timely, or FAST, Voting Act that urges States to compete for
25 a pot of Federal matching funds and to put forward proposals

1 for things that they might do--online, registration, voting
2 by mail, expanding the days available--to ensure that we
3 have got as much access to the opportunity to exercise the
4 right to vote as reasonably possible. Other bills impose
5 Federal minimum standards in terms of access, and I would be
6 interested--if I might, to Secretary Bennett, I admire your
7 stated goal of having the best election system, I think you
8 said "in the world." I serve on the Foreign Relations
9 Committee with Senator Durbin, and we both are quite
10 interested in and engaged in the promotion of democracy in
11 the developing world. It is an embarrassment, I think, to
12 this country, when we have an election where there are 6-,
13 7-, 8-hour waiting lines, and I am really concerned and
14 troubled by what seem to be some of the motivations behind
15 more aggressive registration and voter ID laws.

16 Help me understand--you made passing reference to
17 county officials--as a former county official. What do you
18 see as the capability, the capacity of States and counties
19 to comply with Federal mandates, minimum standards to ensure
20 that we really do have the best voting system in the world?

21 Mr. Bennett. Thank you, Senator. It has probably been
22 better than ever before since the passage of HAVA and the
23 related Federal dollars that came out because of that. But
24 I think we are at the point where, at least in Arizona, and
25 from conversations I have had with people around the

1 country, a lot of the equipment that was purchased with
2 those dollars are nearing end-of-life cycles. That is a
3 point that I have discussed with the 15 county recorders and
4 election directors in Arizona as recently as last week to
5 come up with a funding stream. I have proposed something
6 along the lines of maybe \$3 or \$5 per voter per year be
7 budgeted at each of the county levels as well as out of the
8 State general fund budget. To me, \$5 a year per registered
9 voter is a reasonable sum to accomplish the very fundamental
10 purpose of allowing people to vote without having to set in
11 long lines, upgrade equipment, maybe more in the direction
12 of voting centers--two of our counties, for example, have
13 already moved in that direction--where any voter from a
14 county can go to any voting center, and you do not have the
15 phenomenon of, "I am in the wrong polling location, and the
16 ballot that I cast did not count because I did not find the
17 right polling location."

18 Senator Coons. That is compelling.

19 Mr. Bennett. So there are technological advances and
20 things that we can do. There is no more Federal money. We
21 still have a little bit of it left in Arizona that we will
22 probably make available as seed money to the counties, maybe
23 in a matching thing, to address the renewal of our
24 equipment. But the resources are getting very thin.

25 Senator Coons. Understood. I appreciate that input,

1 and the regional voting centers idea strikes me as
2 compelling.

3 Mr. Chairman, might I have one last question? Thank
4 you.

5 Ms. Perales, would you agree--I believe from your
6 testimony you would agree--that access to the ballot is
7 diminished by long waiting times and that we should be
8 concerned about disparate impact? A recent study by Hart
9 Research showed that in this election, 2012, 22 percent of
10 African Americans and 24 percent of Latinos had to wait more
11 than 30 minutes, 30 minutes or longer, but only 9 percent of
12 Caucasian or white voters had to wait 30 minutes or longer.
13 Would you care to think and share with me about the cause of
14 this disparity, what can be done to remedy it, and what does
15 it say about the continued value of the Voting Rights Act at
16 a time when the Supreme Court is reviewing its
17 appropriateness?

18 Ms. Perales. Well, thank you. I do not have an
19 explanation for why there are longer lines for some minority
20 groups nationwide. I think the explanation may vary State
21 by State. But it is very discouraging to have to wait such
22 a long time to be able to cast your vote. And if you have a
23 job where you do not have the flexibility to take time off
24 to vote, it makes it even tighter because you are in line
25 and you realize you have to go back or you are going to get

1 in trouble with your boss. Or many of us face, you know,
2 the after-work attempt to vote where you have got to get
3 home and you have got to cook dinner, and you have these
4 things that you have to do with your family. So it makes it
5 very difficult, and we have seen a lot of people just get
6 out of line and go home.

7 With respect to Section 5, I have to say that it has
8 been so critically important for the minority community over
9 time and since the time that the covered jurisdictions were
10 covered in 1965 and 1975. Just this year, speaking from my
11 perspective as a litigator, it has continued to be critical
12 and very much alive for us. In Texas, when the legislature
13 passed a plan that absolutely, clearly discriminated against
14 Latinos and African Americans, and even was found to have
15 purposefully racially discriminated, if we did not have
16 Section 5, those plans would have gone into effect while we
17 struggled in court with our limited resources to assemble
18 enough experts and other witnesses to convince a three-judge
19 panel in Texas that eventually it would have to be enjoined.

20 You know, Section 5 shifts the burden properly to
21 jurisdictions that are covered to show at the outset that
22 their laws are not discriminatory. In the case of Texas and
23 the 2011 redistricting, Texas could not prove that its plans
24 were non-discriminatory in the D.C. court, and the plans
25 were rightfully enjoined. And as a result, we had elections

1 under interim plans that were vastly more fair than they
2 would have been otherwise.

3 So Section 5 is very much alive for us. That is not
4 the only example I could give, but I am giving you a short
5 answer. It is alive, it is vibrant, and it is so needed.
6 It is precious to us and the core of the most effective
7 piece of civil rights legislation ever passed by Congress.

8 Senator Coons. Thank you very much. Thank you both
9 for your testimony and for your very hard work litigating
10 what I know are complex and difficult cases.

11 Just in closing, if I might, Mr. Chairman, say that I,
12 too, am passionate about ensuring that the Voting Rights Act
13 remains alive and relevant and that the ugly history that
14 led to the 1965 Voting Rights Act and to these preclearance
15 requirements, there is plenty of evidence--and you cite the
16 Texas case--to suggest that these are, sadly, still valid
17 concerns and that they require strong Federal legislative
18 action to ensure access to the polls, that a safe, that a
19 fair, and that an open electoral system remains a part or is
20 a part, becomes a part of America's electoral future,
21 because our history suggests that in the absence of
22 determination and rigor, we may lose one of the most
23 foundational civil rights in this country.

24 Thank you for your work. Thank you all for your
25 testimony today.

1 Senator Durbin. Thanks, Senator Coons.

2 Let me ask Representative Cobb-Hunter and Ms. Perales
3 the following question. I think I know--I do know the
4 answer, but I want to hear your response.

5 What is the big deal? If I want to ride on an
6 airplane, I have got to show an ID. If I want to rent a
7 car, I have got to show an ID. Sometimes even to go to a
8 Presidential rally, I have to show an ID. So what is the
9 big deal of showing an ID to vote, for goodness' sakes, to
10 make sure that I am who I say I am?

11 Ms. Cobb-Hunter. Well, Senator, we heard that question
12 a lot during the debate in South Carolina, and I will tell
13 you what the big deal is for my constituents. An ID is
14 something that is difficult to come by, and my perspective
15 is rural and dealing with people who do not have
16 documentation that might be necessary.

17 It is important to note that the notion of an ID in and
18 of itself is not the problem. We, those of us in South
19 Carolina, members of the Legislative Black Caucus, who
20 walked out of our legislature during the debate on this,
21 where we came down in disagreement was that the barriers
22 that requiring a photo ID set in some communities were just
23 simply too much for our constituents to deal with.

24 For example, there was the offer of a free ID, just go
25 to the DMV and you can get a free ID. The reality, as I

1 said earlier and as is in my written testimony, is that it
2 is not that simple.

3 For example, women who are divorced, if you go to the
4 DMV and a name is different than what you had, then you are
5 talking about incurring expenses of going through name
6 changes because it does not match what is on the original
7 voter registration. If you lived on a farm and you were
8 delivered by a midwife and the record of your birth, for
9 example, is in a family Bible--in a lot of communities of
10 color, births are recorded in family Bibles.

11 So the issue is not the ID. The issue for us in South
12 Carolina was the documentation that is required to get an
13 ID. And so it is not that we support fraud, and I would
14 point out again that there were absolutely zero--I have
15 heard six, I have heard different numbers here. In South
16 Carolina, there was not and is not one case that can be
17 cited of a person showing up at the polls with the ID of
18 another person attempting to vote.

19 It is critical for us in South Carolina that the
20 preclearance requirement of Section 5 be maintained, and let
21 me just end by saying we were fortunate in our State that
22 the three-judge panel ruled that this ID law could not take
23 effect before the November elections. Where we are
24 concerned is that, given my history in the legislature in
25 South Carolina, all of the conversation and explanation that

1 we had before the three-judge panel, where our State
2 election officials and their discussion of reasonable
3 impediment, in effect creates a new law. I am concerned
4 about what the implementation will actually look like.

5 We have no record of saying--in response to the other
6 question about whether or not these voter ID laws had
7 impacted voter turnout, we cannot answer that question yet
8 in South Carolina because it has not been implemented. But
9 I will say that there is mass confusion in the State. We
10 have got an election that will come up in January, a local
11 election, and there is confusion because people are still
12 under the impression that the law that was litigated before
13 the three-judge panel is the law that will take effect then.

14 So we are all for integrity, but we are not for
15 barriers that preclude people the right to vote.

16 Senator Durbin. Ms. Perales, would you like to add
17 something?

18 Ms. Perales. Thank you, yes. So the big deal is that
19 most people do have a photo ID that could use to vote,
20 depending on what State you are in. But many people do not,
21 and there are higher numbers of these people in certain sub-
22 communities, so I will mention briefly the clients that I
23 had in the voter ID litigation in Texas.

24 Two young women, recently graduated from high school,
25 Victoria and Nicole Rodriguez, top of their class, the pride

1 of our community, full scholarships to college. They had
2 student IDs from high school, but they did not have driver's
3 licenses because it was too expensive in their very limited
4 income home to put them on the car insurance, because when
5 you get a driver's license, your parents' car insurance goes
6 through the roof, especially if there are two of you.

7 And so these young women actually came to D.C. and
8 testified, and they boarded a plane using their student ID.
9 They got here. They were able to check into a hotel, and we
10 helped them along the way. But this was ID that under the
11 Texas new law was not going to be sufficient. So the
12 tighter the voter ID law is, the more difficult it is for
13 certain groups.

14 Victoria and Nicole were young, and they were poor,
15 quite frankly. And in that group, especially if you are
16 dependent on public transportation, there are going to be
17 much higher rates of people without voter ID.

18 The first analysis done by Texas in the preclearance
19 process in front of DOJ yielded a statistical result that
20 Latinos were twice as likely as non-Latinos to lack an
21 official driver's license issued by Texas. Nobody is really
22 sure whether that is the true number, but that was the first
23 number that Texas came up with.

24 Senator Durbin. Thank you.

25 Mr. Bennett, I am going to ask you the last question

1 here. Could you say in just a few words, could you describe
2 to me why a person in Arizona, when they attempted to vote,
3 would receive a provisional ballot?

4 Mr. Bennett. The most common reason is that--this past
5 year, this past election just a month ago, the most common
6 reason is that they had been mailed an early ballot by mail
7 and either lost it in their household shuffle or whatever
8 and showed up on election day at a polling location to vote.
9 At that point, there is an indication by their name that
10 they have a live ballot that was mailed to them at home. So
11 that they do not inadvertently get to vote twice, they are
12 asked to vote a provisional ballot. The provisional ballots
13 are set aside for a day or two until all of the late-
14 arriving ballots by mail are verified. And then once we
15 know that we did not receive a ballot by mail from that
16 voter, then their provisional ballot is cast.

17 We had many voters who admitted that they heard on the
18 media or whatever that, you know, if you had mailed your
19 ballot on Friday or Saturday, with the election on Tuesday,
20 it might not get there in time, so as a fail-safe, go down
21 and vote a provisional ballot. So the first reason why
22 people were asked to vote provisionals were they had already
23 been mailed a live early ballot.

24 Senator Durbin. So did you detect any trends in terms
25 of this instance where people were given a provisional

1 ballot based on being sent an early ballot? I mean, were
2 there more whites, more blacks, more Hispanics, more women,
3 more men?

4 Mr. Bennett. No. In fact, our largest county,
5 Maricopa County, around the Phoenix metropolitan area--I
6 should probably have provided you with a wonderful map that
7 they did that identifies the Hispanic surname voters in the
8 precincts throughout Maricopa County, and the higher
9 percentages are a darker color. And then they have done an
10 evaluation already of where did the provisional ballots come
11 in. And the provision ballots are scattered all throughout
12 the county.

13 Senator Durbin. So the largest or the most dominant
14 reason for issuance of provisional ballots appeared to be
15 across the board, affecting everybody.

16 Mr. Bennett. Yes, absolutely.

17 Senator Durbin. That is why I wanted to ask you this
18 question, because you spoke about Maricopa County in your
19 testimony here. Statewide in Arizona, in the 2012 election,
20 172,000 provisional ballots, roughly, were cast. That is
21 7.4 percent of the total number of ballots cast. More than
22 two-thirds of the provisional ballots cast statewide,
23 however, were cast in Maricopa County, where a large number
24 of Arizona's minority voters reside. Nineteen percent of
25 all provisional ballots in the State were rejected and not

1 counted.

2 According to an analysis by the Arizona Capitol Times,
3 Maricopa County voters living in precincts with higher
4 percentages of minorities had a greater chance of casting
5 provisional ballots in the November 6th election. Eighty-
6 two percent of the voters in the Holly precinct, north of
7 Phoenix, are minorities. In that precinct, 18.5 percent of
8 all ballots cast were provisional. In Tempe's Hudson
9 precinct, where 43 percent of the residents are minorities,
10 32 percent of all ballots cast were provisional.

11 Can you explain why voters in Arizona's predominantly
12 minority precincts were so much more likely to receive and
13 cast provisional ballots that may ultimately not be counted?

14 Mr. Bennett. First of all, Senator, the data that you
15 are referring to in the Capitol Times article is not data
16 that I have heard from the counties themselves. What I did
17 glean from the meeting that I referred to with the two
18 Hispanic voter registration groups, one of them admitted
19 that of the 34,000 Latino voters that they registered within
20 the last few weeks or a month or two before the election, on
21 man of those voter registration forms, the voter themselves
22 had not checked the box to be on what is called the
23 Permanent Early Voter List and receive their ballot by mail.

24 For the purposes of the organization that was pushing
25 the drive, I was frankly a bit surprised that they admitted

1 to me that the organization officials had checked a box on
2 the voter registration form that the voter may not have
3 known had been checked by the group that they gave it to,
4 which caused a ballot to be mailed to those folks, and they
5 were thinking, "I am going to go to the polls and vote."
6 Then a ballot shows up. Perhaps they thought it was a
7 sample ballot or whatever. So there was at least one
8 anecdotal evidence of these groups that registered large
9 Latino voters--

10 Senator Durbin. I understand that, but what you said
11 earlier was when you looked at provisional ballots, they
12 were across the board; but what the statistics show is that
13 provisional ballots were more likely in the minority
14 precincts--

15 Mr. Bennett. I do not think statistically that is
16 correct, Senator. I think they could find, as I think that
17 article indicates, that of the darker blue--the color that
18 they used on these maps. Of the darker blue precincts that
19 had a higher percentage of minorities or Hispanic surname
20 registered voters, I am sure some of those precincts did
21 have higher percentages maybe than the average. But when
22 you look at the map of where the provisional ballots came in
23 from across the county, they were scattered throughout the
24 county, came from some of our--I personally sat at a table
25 with a volunteer and processed a large group of provisional

1 ballots from one of our predominantly non-minority
2 precincts. And so I would respectfully suggest that they
3 might be picking one or two precincts that correlate between
4 high voter registration--or high minority registration and
5 high provisional ballots. But there were as many or more
6 precincts that did not, that had low minority percentages.

7 Senator Durbin. So we will take a look at that and
8 perhaps compare some statistics.

9 Mr. Bennett. Thank you.

10 Senator Durbin. I want to thank this panel, and I want
11 to thank all of you who have followed this hearing today.
12 The obvious question is: The election is over. Why are you
13 concerned about it? And we are concerned about it for
14 something very basic stated by our courts. The Supreme
15 Court said the right to vote is indeed "preservative of
16 other basic civil and political rights." I remember when
17 that question was asked I think of every Supreme Court
18 nominee if they understood how important this one right was.
19 And, in fact, they all testified that they did, and we
20 should not forget it.

21 So we have a lot of organizations that want to put
22 written statements in the record: Leadership Conference on
23 Civil and Human Rights, Lawyers Committee for Civil Rights,
24 Center for American Progress, African American Ministers
25 Leadership Council, the American Civil Liberties Union, and

1 DEMOS. Without objection, the statements will be put in the
2 record. No objection.

3 [The statements follow:]

4 / COMMITTEE INSERT

1 Senator Durbin. The hearing record will be held open
2 for 1 week for additional statements. Written questions may
3 be sent your way to the witnesses at the close of business.
4 We hope that 1 week from today you will spend Christmas Eve
5 and Christmas Day completing the questionnaire and get them
6 back to us. We will ask the witnesses to respond promptly
7 so we can complete the record. And if there are no further
8 comments from our panel or my colleagues, I thank the
9 witnesses for attending and colleagues for participating.

10 The hearing stands adjourned.

11 [Whereupon, at 11:53 a.m., the Committee was
12 adjourned.]

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