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FOR JUSTICE

Testimony of

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Committee of the Whole
of the Texas Senate**

regarding

The Myth of Voter Impersonation Fraud at the Polls

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On behalf of the Brennan Center for Justice at NYU School of Law, I want to thank you for the opportunity to speak with you today.

My name is Adam Skaggs, and I am counsel at the Brennan Center. The Brennan Center is a non-partisan public policy and legal advocacy organization that focuses on fundamental issues of democracy and justice. Among other things, we seek to promote policies that ensure fair and accurate elections and that maximize citizen enfranchisement and participation in the electoral process. The Brennan Center works to remove barriers to voting while ensuring that the integrity of our elections is protected, because we believe electoral integrity is advanced when all eligible citizens are able to participate in elections. Our work toward these goals has included extensive research and the publication of studies and reports; assistance to state and federal policy makers and advice on electoral legislation; and — when it has been necessary — litigation to protect the fundamental right to vote.

As part of this work, we have paid particular attention to the debate over strict voter identification policies. We have commissioned research on the number of citizens who lack certain forms of documentary proof of identity and we have participated as amicus in litigation over strict voter identification policies in Indiana, Georgia, Arizona and Albuquerque, New Mexico.ⁱ A central facet of these efforts has been our research on allegations of voter fraud. We have analyzed claims of rampant voter fraud in order to distinguish unfounded and exaggerated tales of fraud from reliable, verified claims of election misconduct. We published the results of our analysis in a monograph entitled “*The Truth About Voter Fraud*,” which compiles the methodological flaws that lead to allegations of voter fraud, and debunks baseless — though often repeated — reports of voter fraud.ⁱⁱ In my testimony here today, I will share some of our findings.

Our findings illustrate that S.B. 362 makes little sense as a matter of policy, for three reasons. First, it does not fix any notable problem that Texans have had. Second, to bolster their case, supporters highlight problems that S.B. 362 would *not* correct, which misleads the public into thinking that S.B. 362 will accomplish more than it ever could. Lastly, and perhaps most important, S.B. 362 is likely to create problems far worse than the one it could possibly address. I will focus my testimony today on the first two issues, and leave to my colleagues addressing the third point — whether the proposed solution actually creates problems that are worse than the one S.B. 362 is designed to address.

Because we have found virtually no fraud of the type that an ID requirement could fix, the Brennan Center is often charged with denying the existence of election irregularities. This is not accurate, and I would like to state this with absolute clarity: unfortunately, some forms of election misconduct and fraud do occur with some frequency.

Last year, as in the past, there were repeated instances of voter misinformation and intimidation — such as when voters in particular communities were informed that they would be arrested if they had unpaid parking tickets, or voters were given inaccurate information about where their polling places were located.ⁱⁱⁱ There have been repeated instances in which election officials have denied registration to individuals without legal justification; we saw this problem with college students in multiple communities last fall.

Occasionally, individuals offer to sell their votes, or vote where they do not actually reside. And there have been confirmed examples of fraudulent activity involving absentee ballots. Some of these incidents involve absentee voters being coerced or bribed; others involve schemes to submit multiple fraudulent absentee ballots.

All these acts should be condemned. Where it does exist, election fraud and misconduct should be investigated and punished. And it often is.

Finally, some reports of voter fraud result from mistakes by individuals who register or vote without realizing they are not eligible. For example, in Arizona, individuals in the process of becoming naturalized citizens registered after they received letters from immigration authorities telling them that their “application for citizenship ha[d] been approved” — but before they’d formally taken the oath of citizenship. In Wisconsin, we saw a citizen show up to vote and present his prisoner ID card — prominently stamped with the word “offender.” Unfortunately, the poll worker in Wisconsin let this individual cast a ballot in spite of his conviction status. But these are examples of human error; these individuals were not trying to misrepresent their status, and they were not trying to commit fraud.

No one is arguing that ineligible individuals should be permitted to vote, but publicizing eligibility requirements and training poll workers is a more effective answer to preventing non-citizens or felons from voting than requiring identification from every legitimate voter.

As to allegations of other types of voter fraud, our research indicates that these claims often prove baseless upon inspection: except in the rarest of cases, those who are screaming about fraud are crying wolf. This is true of the most frequently reported forms of putative voter fraud — including double voting, voting in the name of dead people, and — most importantly for the purposes of this hearing — individuals impersonating registered voters at the polls. The Brennan Center’s exhaustive research revealed that there is little to no reliable evidence of in-person impersonation fraud, in Texas, or elsewhere in the country. And, of course, this form of fraud is *the only* misconduct that a voter identification requirement will address.

This is worth repeating: the only problem that a voter ID requirement could possibly fix usually doesn’t exist. Texans are struck and killed by lightning more often.^{iv} And there are far, far more reports of UFOs every year than instances of impersonation at the polls.^v

There are several reasons why reports of fraud at the polling place crumble when they’re subjected to real scrutiny.

First, many claims of impersonation fraud are based on record matching processes that are inherently flawed. Using data matching in order to identify suspected cases of voter fraud involves the comparison of computerized lists of voters with other computerized lists. For example, voter lists may be matched with lists of deceased individuals. Unfortunately, this data matching is often unreliable.

For example, a father may be confused with a son of the same name; without controlling for suffixes like “Jr.,” “John Smith, Jr.” may be misidentified as the same voter as “John Smith, Sr.” These problems also occur when records are deemed to match if they share a middle initial, without requiring a full match of the middle name. And they occur when similar — but not identical — names are said to match.

A very highly publicized example of this problem occurred when the Atlanta Journal Constitution attempted to find voter fraud by matching a list of voters against Social Security death records. The article cited the example of a dead voter named Alan Jay Mandel, and said that someone had “definitely” impersonated Mr. Mandel and signed his name in the pollbooks.^{vi} The alleged example of impersonation fraud was widely cited by numerous public officials, but it didn’t pan out: it turned out that the signature actually belonged to one Alan J. Mandell — with 2 “l”s — not the dead Mr. Mandel, with just one “l”. The actual voter — the one with 2 “l”s — was very much alive and well when he voted.^{vii}

Second, many erroneous reports of impersonation fraud are attributed to clerical errors, such as a legitimate voter signing the pollbook on the line meant for a voter with a very similar name, or a pollworker scanning the wrong voter’s bar code at the end of the day. “*The Truth About Voter Fraud*” catalogues numerous examples of such clerical errors. As the report makes clear, after initial claims of polling place fraud are investigated thoroughly, they are very frequently revealed to be the result of understandable human error — not any attempt to defraud the election system.

Both of these problems turned up in the claims of impersonation fraud lobbed by the Texas Watchdog website in the weeks before the 2008 election. In a story headlined “Dead Voters Cast Ballots in Dallas County” — later changed to reflect reality — 48 specific votes were questioned.^{viii} Poll books and signature rosters were available for 47 of those votes, and after a more careful review, the Dallas Morning News “concluded that none involved a fraudulently cast vote.”^{ix}

To summarize, there are plenty of since-debunked reports of voter fraud — but virtually no confirmed examples of impersonation fraud. And, notably, this isn’t for lack of trying. It’s widely known that, under the previous administration, the U.S. Department of Justice prioritized investigation and prosecution of voter fraud. But in five years of effort, they did not prosecute a single case of impersonation fraud. The crimes the DOJ did prosecute — campaign finance violations, voter harassment, and vote buying, among others — would not be prevented by S.B. 362.^x Texas Attorney General Abbott similarly spent two years and \$1.4 million dollars to fight voter fraud, yielding indictments for all sorts of things that identification rules would *not* prevent, but not a single case that S.B. 362 could fix.^{xi} Moreover, the scarcity is not confined to indictments or prosecutions; in the past few years, with immense prosecutorial resources diverted to voter fraud, even allegations of impersonation at the polls have been strikingly rare.

There is an obvious reason why impersonation fraud — the only thing S.B. 362 *would* address — is such a rarity: the risk of getting caught is high, the penalties are extreme, and there is hardly any payoff. Under federal law, any voter impersonator faces up to

five years in prison, and fines of \$10,000.^{xii} Texas law allows up to *ten* years in prison and a \$10,000 fine.^{xiii} For a non-citizen, deportation is added to that calculus. And there is very little incremental value to a single vote: in the vast majority of elections or referenda, a single vote will not provide the margin of victory. So there is little incentive to risk the severe penalties for the crime. Anyone who truly is willing to risk the severe criminal sanctions for voter fraud would be much more likely to commit a crime with “more bang for the buck” than one single vote.

As Texas Republican campaign consultant Royal Masset put it, “in-person voter fraud is non-existent. It doesn’t happen, and . . . makes no sense because who’s going to take the risk of going to jail on something so blatant that maybe changes one vote?”^{xiv}

There is an additional reason why impersonation fraud is so rare in Texas: voters must *already* prove their identity before voting.^{xv} They do so by signing their name in the pollbook, and swearing an oath before an election official. They also must show documentation — either a registration certificate, or one of a broad series of documents designed to accommodate the diversity of Texas’s population. S.B. 362 makes the existing law substantially more strict, without a reason for doing so — there is no indication that the existing law is failing in any way.

A Strict Voter ID Policy Does Not Address the Real Threats of Voter Fraud

This brings me to the last point that I would like to address briefly: whether the “solution” that S.B. 362 proposes actually fits the problem.

As I’ve explained, the problem that S.B. 362 potentially could address — impersonation fraud — has been thoroughly discredited as a national problem. And we’ve not seen any credible evidence that Texas bucks this trend significantly: impersonation fraud doesn’t occur in Texas any more than it occurs elsewhere, as the investigation by Attorney General Abbot proved. The few allegations that have emerged in the last several weeks regarding the City of Progresso don’t change this conclusion. There was one report of a woman in the City of Progresso who signed her own name under a different voter’s name, and then herself reported this mistake to election officials. And there have been allegations of Progresso voters being paid to vote for a specific slate of candidates. These examples simply do not establish that impersonation fraud is a prevalent problem; and, in any event, S.B. 362 would not stop fraud involving vote buying if the voters and voter-buyers were willing to risk the relevant punishment.

The other problems that have been reported, in Progresso and elsewhere, involved issues that wouldn’t even remotely be addressed by voter ID. These include ineligible non-citizens voting; voting by individuals who resided outside city limits; and, significantly, eligible citizens who were wrongly *prevented* from voting. These issues have nothing to do with S.B. 362. But because there’s no evidence of impersonation fraud, backers of bills like S.B. 362 trumpet these other types of misconduct.

They’ve got no other choice to resort to this sleight of hand. S.B. 362 addresses a so-called problem that doesn’t exist in any real sense — and that isn’t likely to develop for

numerous reasons. So its backers must lump together a series of other vices that are admittedly bad, but that are really just distractions here.

If voter intimidation, or vote buying, or absentee ballots cause real problems, then regulate these ills. But don't cite them in support of a policy that will do nothing to stop them. It doesn't follow, as a simple matter of logic.

And it doesn't make sense as a policy matter either. A law that will discourage voting by the groups who historically vote at disproportionately low levels, and that will actually lock eligible citizens out of the electoral process — something my colleagues will say more about — had better be justified as a reliable fix for a real and very serious problem.

That simply is not the case with S.B. 362.

I thank you for your time, and am happy to answer any questions that you might have.

ⁱ See Brief of the Brennan Center for Justice *et al.* as *Amici Curiae* Supporting Petitioners, Crawford v. Marion County Election Board, Nos. 07-21, 07-25 (U.S. Nov. 13, 2007); Brief of Brennan Center for Justice at NYU School of Law as *Amicus Curiae* in Support of Plaintiffs-Appellants and Reversal, Crawford v. Marion County Election Board, 472 F.3d 949 (7th Cir. 2007); Brief *Amicus Curiae* of the Brennan Center for Justice at NYU School of Law in Support of Plaintiffs/Appellants and Reversal, Gonzalez v. Arizona, 485 F.3d 1041 (9th Cir. 2007); Brief of Brennan Center for Justice at NYU School of Law as *Amicus Curiae* in Support of Plaintiffs/Appellees and Affirmance, Case No. 07-02067 (10th Cir. Sept. 17, 2007); Brief of Brennan Center for Justice at N.Y.U. Law School as *Amicus Curiae* in Support of Plaintiffs-Appellees and Affirmance, Common Cause/Georgia v. Cox, Case No. 05-15784-G (11th Cir. Jan. 14, 2006); Brief of Brennan Center for Justice at NYU School of Law as *Amicus Curiae* in Support of Plaintiffs' Motion for Summary Judgment, ACLU of N.M. v. Santillanes, 506 F. Supp. 2d 598 (D.N.M. 2007).

ⁱⁱ Justin Levitt, The Truth About Voter Fraud (2007), *available at* <http://www.brennancenter.org/content/resources/truthaboutvoterfraud/>.

ⁱⁱⁱ See generally Wendy Weiser & Margaret Chen, Voter Suppression Incidents 2008, Nov. 3, 2008, *at* http://www.brennancenter.org/content/resource/voter_suppression_incidents/.

^{iv} See, e.g., Ronald L. Holle, Lightning Deaths by State, 1997 to 2006 (2007), *at* http://lightningsafety.noaa.gov/stats/1997-2006_Fatalities+Rates.pdf.

^v See, e.g., UFO Casebook, Breaking UFO News Reports, *at* <http://www.ufocasebook.com/>.

^{vi} See Jingle Davis, *Even Death Can't Stop Some Voters*, Atlanta Journal Constitution, Nov. 6, 2000.

^{vii} See Secretary of State Cathy Cox, The 2000 Election: A Wake-Up Call for Reform and Change 11 n.3 (2001), *available at* http://www.sos.state.ga.us/acrobat/elections/2000_election_report.pdf; *see also* Jingle Davis, *State Plans to Update Voter Lists*, Atlanta Journal Constitution, Feb. 10, 2001.

^{viii} See <http://www.texaswatchdog.org/2008/10/dead-voters-cast-ballots-in-dallas-county/>.

^{ix} See <http://www.dallasnews.com/sharedcontent/dws/news/politics/local/stories/121408dnmetvoterfraud.31ad7c1.html>.

^x See U.S. Dep't of Justice, Criminal Division, Public Integrity Section, Election Fraud Prosecutions & Convictions, Ballot Access & Voting Integrity Initiative, October 2002 – September 2005, at <http://www.truthaboutfraud.org/pdf/doj%20election%20fraud%20prosecutions.pdf>.

^{xi} See Dave Montgomery, *Voter ID Legislation Touches Off Partisan Battle among Texas Lawmakers*, Ft. Worth Star-Telegram, Jan. 20, 2009; Arnold Garcia, Jr., Editorial, *Tackle State's Real Problems*, Austin American-Statesman, Jan. 18, 2009.

^{xii} See 42 U.S.C. § 1973i(c), (e); 42 U.S.C. § 1973gg-10.

^{xiii} See Tex. Elections Code § 64.012; Tex. Penal Code § 12.34.

^{xiv} Dalia Lithwick, *Nuts about ACORN*, Slate, Oct. 16, 2008, at <http://www.slage.com/toolbar.aspx?action=print&id=2202428>; see also Texas Politics, *A Republican, His Mother and Voter ID*, Apr. 24, 2007.

^{xv} See Tex. Elections Code §§ 63.006-63.0101.