EXPANDING AND IMPROVING OPPORTUNITIES TO VOTE BY MAIL OR ABSENTEE (continued)

HEARING

BEFORE THE

SUBCOMMITTEE ON ELECTIONS

COMMITTEE ON HOUSE ADMINISTRATION
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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EXPANDING AND IMPROVING OPPORTUNITIES TO VOTE BY MAIL OR ABSENTEE

MONDAY, OCTOBER 22, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ELECTIONS,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The subcommittee met, pursuant to call, at 5:35 p.m., in room 1310, Longworth House Office Building, Hon. Zoe Lofgren (chairwoman of the subcommittee) presiding.

Present: Representatives Lofgren, Gonzales, Davis of California, Ehlers, and McCarthy.

Staff Present: Liz Birnbaum, Staff Director; Thomas Hicks, Senior Election Counsel; Janelle Hu, Election Counsel; Jennifer Daehn, Election Counsel; Matt Pinkus, Professional Staff Member/Parliamentarian; Kyle Anderson, Press Director; Kristin McCowan, Chief Legislative Clerk; Matthew DeFreitas, Staff Assistant; Fred Hay, Minority General Counsel; Gineen Beach, Minority Election Counsel; and Roman Buhler, Minority Election Counsel.

The CHAIRWOMAN. The subcommittee will come to order.

We will now receive testimony from our third panel of witnesses today. Our witnesses today are John Fortier and Warren Harrison.

John Fortier is a research fellow at the American Enterprise Institute, where he writes and comments on Congress, the presidency and elections. He writes a weekly column on Congress and elections for The Hill newspaper of Capitol Hill. He is a participant in Election Watch, AEI's election analysis forum. He also serves as the principal contributor to the AEI-Brookings Election Reform Project and is the executive director of the Continuity of Government Commission. Previously, he managed the AEI-Brookings Transition to Governing Project on presidential transitions.

Next we have Warren T. "Tom" Harrison, who was the director of elections for five Secretaries of State, several as the executive director of the Texas Ethics Commission, from September 1995 to December 2002. Mr. Harrison currently serves as deputy director and general counsel of Texas County and District Retirement System.

Your statements will be placed in the record in their entirety, and our procedure is to ask that you summarize your written statement in 5 minutes. When your 5 minutes is up, the red light will flash. And it gives you a warning sign of yellow when you have 1 minute to go, and when that happens, we would ask that you conclude your statement. And then, after both of you have concluded your written statements, we will go to members with questions.

So if we can begin with you, Mr. Fortier. Welcome.

STATEMENTS OF JOHN FORTIER, RESEARCH FELLOW, AMERICAN ENTERPRISE INSTITUTE; TOM HARRISON, DEPUTY DIRECTOR AND GENERAL COUNSEL, TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

STATEMENT OF JOHN FORTIER

Mr. FORTIER. Thank you very much, Ms. Chairwoman. I am here today to talk about absentee voting more broadly and say a few things about the bill before you.

Let me say something about the rise of voting before Election Day. It has been tremendous in the last 30 years. We used to have a situation where most States had 4 or 5 percent of their population out of town or, for some other reason, having to vote by absentee. And, in fact, in the 2004 election, we saw nearly a quarter of Americans vote before Election Day. That was either by mail or at voting stations or polling places that opened early, before Election Day. So it certainly is a trend that is worth following and worth this committee's attention.

Absentee ballots are also absolutely necessary for some parts of the population. There are people who cannot get to polling places, whether they are overseas voters or people who are sick or bed-ridden or out of town on business. But, in many ways, absentee balloting is inferior to voting at polling places. And I list a few reasons.

One, the protections of the polling place that are there to protect the privacy of the vote do not travel with the absentee ballot. When an absentee ballot is sent out to you, there is the possibility of coercion from your spouse, from your employer, from your union, from your religious affiliation. If you are pressured by someone and you go to a polling place, you can thumb your nose at them and vote however you want when you pull the curtain. But when you have an absentee ballot, we don't know what pressures you have. So that is a concern of absentee balloting that was a concern for those who instituted absentee balloting a hundred years ago.

Second is fraud. Fraud is a very difficult issue to discuss. There are lots of different opportunities for fraud. It is hard to measure. But certainly with absentee balloting, there are some additional opportunities for fraud. There have been certain cases of interception in the mail and people filling out ballots for those who—not their own ballots, but other people's ballots. Again, academic research has not been able to measure this. It is hard to know how much of that goes on. But certainly there are some additional opportunities.

A couple of other issues I will raise about absentee balloting which are less certain. There are certainly people who worry about the error rates of absentee balloting. And there is some varied initial academic research on this, but really not a strong body one way or the other. And the worry is that some of the checks that we put into the polling places, the checks that prevent people from overvoting or undervoting, are not there for absentee balloting and that we may find that there will be more ballots spoiled by voters

who vote absentee. And, with that, we certainly need more research, but it is a possibility.

And finally, absentee balloting lengthens the voting period significantly. And while you might vote a month or 6 months or weeks before an election, you might find that there is a development in the election or that there are important debates that you missed as a voter, and we worry about too long a voting period. Certainly absentee balloting has those difficulties.

Quickly, there are a couple of stated benefits. One is convenience, and I think absentee balloting clearly is a convenience and clearly is——

The CHAIRWOMAN. Could you press the button on your mike? I am having no trouble hearing you, but apparently it may not be picking up.

Mr. FORTIER. That will do it.

In terms of convenience, absentee balloting is convenient, and surveys have shown—surveys in Oregon, where they vote all by mail—that people like this convenience very much.

I will say also that there are other convenience voting methods—voting at polling places early, voting at election super-centers that they do in Colorado—which have also shown to be popular. So it is not the only popular convenience method.

And then, finally, the big question about turnout. I think the academic research does not show a significant increase in turnout or really even a statistically significant increase in turnout. There is a vast body of research. There are some studies that will show a small increase in turnout, but overall the evidence is that absentee balloting, while it is more convenient and removes obstacles, does not increase turnout.

The exception is in small, local-turnout elections where a vote-by-mail election in a referendum or a local mayors race in a small town might increase turnout. But, in a Federal or congressional race, it will not.

I am running out of time, but briefly I will say, if I were looking to you as State legislators, if you were here in a State, I would warn you about expanding absentee balloting too much because of some of the reasons I put forward. And, also, I would recommend to you other options. Certainly, many States have moved toward early voting at polling places, which have the protections of the polling place. And I mentioned also these super-centers or vote centers that Colorado has, which some of the research has shown that there is some increase in turnout.

And, finally, I would say, as members of Congress, there is such a great of variety of practice out in the States that I would be careful about making the decision for the States, whether a State is going to choose to be an early-voting State at the polling place, whether it is going to be an absentee-voting State. That is better left to the people in that State than Congress jumping in and making that decision for them.

I will leave that here and take questions from you later.

[The statement of Mr. Fortier follows:]

Testimony of John C. Fortier, American Enterprise Institute

For

The Committee on House Administration Elections Subcommittee

Expanding and Improving Opportunities to Vote by Mail or Absentee

October 22, 2007

Madame Chairwoman, Mr. Ranking Member and Members of the House Administration Committee Subcommittee on elections. I am pleased to submit testimony on several bills before you on the subject of absentee voting.

Voting before election day has become increasingly common in America. In 2004, nearly one quarter of all voters voted before November 2nd, with the majority of those voters casting their votes by absentee ballot.

Access to absentee ballots is essential for several classes of people who really need them, overseas military voters, the bedridden, and travelers, to name a few. But many states have encouraged the use of absentee voting for those who could otherwise go to the polls. I would like to sound a cautionary note regarding this trend. Casting an absentee ballot, while necessary for some, is inferior to casting a vote at a polling place for two major reasons.

First, at a polling place, a voter casts a private ballot. By contrast, there is no privacy curtain around an absentee ballot; it has left the protections of the polling place behind. Without privacy protections, absentee voters are susceptible to coercion of their votes. If a voter at a polling place has been pressured by his employer, union, church, community or spouse, he can draw the curtain, vote privately, and thumb his nose at the pressure. With an absentee ballot, voters might not have a choice but to show the filled out ballot to their tormentors or to receive fifty dollars for a ballot "well filled out."

Second, absentee ballots provide greater opportunities for election fraud. Election fraud is very hard to measure, and there are numerous points in the voting process where fraud could occur. But absentee voting opens up additional opportunities for election fraud. Absentee ballots have been fraudulently requested or intercepted in the mail, for example. The most famous instance of absentee voter fraud occurred in the Miami mayoral race in 1998. A court found such irregularities in the absentee ballots, that all absentee ballots were thrown out, which changed the outcome of the election.

There are tow additional reasons to be cautious about the expansion of absentee ballot beyond those who need it. First, absentee ballots are not subject to the same error checking as most ballots cast at polling places. There is no solid body of academic research on error rates of absentee ballots compared to ballots cast at a polling place. But there is the simple fact that voters who vote on Optiscan or DRE voting machines will be warned if they have not cast a ballot for a particular race, or they will be warned or prevented from voting for two candidates and thereby invalidating their ballot. Absentee voters have no such check against ballot errors. If an absentee voter, for example, inadvertently votes for two candidates, then that vote cannot be counted. A Cal Tech/MIT study after the 2000 election found that several million ballots for president were invalidated because they had been cast improperly, and subsequently added error checking mechanisms have reduced that number substantially.

Second, absentee balloting extends the voting period from one day to over a month. Not only does this dilute the civic spirit of a single election day, it also opens up the

possibility that the voter will cast a ballot before important information becomes available. A vote cast in advance for a candidate who makes a last minute gaffe cannot be retrieved. In many instances, absentee ballots are available to be cast before candidate debates are complete.

The advocates of increased absentee balloting put forth two positive reasons in its favor. First, absentee voting is convenient. Second, the convenience of absentee balloting leads to higher voter turnout.

In Oregon, where elections are conducted by mail, surveys have shown that voters like the convenience of the system. They are happy with the system and do not want to change it. But voters also like other convenience measures that are the competitors to absentee voting. Texas, for example, has a very high percentage of voters casting their ballots before Election Day, but at early polling places, not through the mail. And Texas voters are also happy with their convenience system. Voters do like convenience, but they like many forms of convenience.

On the question of turnout, the promise of absentee balloting leading to higher turnout has not been borne out. The assumption has been that if you remove the obstacles to voting, they will come (and vote). But extensive academic research has shown little or no positive effect from increased absentee voting or voting by mail. The one exception to these findings is that in very low turnout local elections, voting by mail does have a significant positive effect. But in statewide election or federal elections, various studies

have found a minimal effect. And to the extent that some studies have shown a small positive effect, the increase in turnout is not due to the attraction of new voters, but from a slightly higher rate of voting from those who habitually vote. The Oregon experience with all mail balloting has shown that the same voters who once went to the polls, now vote from their kitchen tables. Vote by mail has not changed who makes up the electorate, but only how they vote. Oregon election officials have often pointed to its high voter turnout as evidence of the virtues of voting by mail, but Oregon had high turnout before it instituted vote by mail.

Absentee Ballots: Where We Are and How We Got There?

The first major episode of absentee balloting was during the Civil War, where soldiers in the field were able to cast ballots in the 1864 election. But after the war ended, it was not until the early part of the twentieth century that states began to introduce absentee ballots to civilians. An increasingly mobile population, traversing a vast country led states to adopt modest amounts of absentee voting for particular classes of people. States extended absentee ballots to railroad workers, government employees out of state, military voters away from home, and the sick and elderly. This revolution in voting occurred state by state, but by World War II, nearly every state had adopted some form of absentee voting.

The reformers who advocated for absentee voting saw it as a good because it extended the franchise to those who could not get to local polling places on Election Day. But

these reformers also knew that absentee balloting was in conflict with another recently adopted reform, the secret ballot. In the late nineteenth century, states began to adopt the secret or "Australian ballot." These reforms consisted of a standard ballot printed by government and cast at a polling place where the voter could vote in private. The reforms were instituted to combat election fraud perpetrated by big city political machines. Before the adoption of these reforms, parties would often print up color coded ballots that voters could bring to the polls. The ballots were publicly placed in a box, so that everyone was aware if the voter had voted the proper party line. Those holding patronage jobs were expected to vote for their benefactors. Money was paid for correctly cast ballots. Punishments were meted out to renegade voters.

Within a twenty year period at the end of the 19th century, all of the states had adopted the secret ballot, and by most accounts, this reform was successful in weeding out the coercion at the polling place.

When reformers in the early twentieth century advocated for the introduction of the absentee ballot, the issue of the secret ballot was fresh in their minds. There were many legislative and state constitutional battles over whether absentee voting was constitutional, as many states had guaranteed the privacy of the vote in their constitutions. To balance the goods of privacy of the vote and offering absentee ballots to those who needed it, reformers instituted absentee ballot protections. Absentee ballots were only offered to particular classes of people who provided reasons why they needed such ballots, and procedures that preserved a degree of privacy for such ballots were

instituted. The most common set of procedures was for a voter to bring his or her blank absentee ballot to a notary public, showing that the ballot had not been cast. The voter then was to fill out the ballot so that the notary public could see that no one else was filling the ballot out for them or that no one was coercing their vote. The voter would seal the ballot in an envelope, and the notary public would indicate that the ballot had been filled out properly.

Until thirty years ago, most states had requirements like this on the books. And a few states still require witnesses or notaries in filling our absentee ballots. With this system in place, roughly five percent of voters cast their ballots by absentee. But in the 1970s, a number of states, particularly in the West, began to loosen the restrictions on casting an absentee ballot, or even actively encouraging the casting of absentee ballots. The result has been an explosion of absentee voting. Nearly 15% of Americans cast a ballot by mail in the 2004 election, and an additional 8% voted before Election Day at early polling places.

These numbers do not tell the whole story, for the rise in absentee ballots has been even more dramatic even particular states. Many northeastern, midwestern and southern states have very modest amounts of absentee voting that resembles the prevailing rate of absentee voting thirty years ago. But in the last presidential election, Oregon voted 100% by mail, Washington State almost 70%, and Arizona, California and Iowa over 30%. There are also states that have heavy early voting. Texas and Tennessee had nearly half of their voters cast votes early at polling places. Some states have a mix of

both practices. Nevada, Colorado, and New Mexico had over 45% of their voters cast ballots before Election Day, either by mail or at early polling places.

For a more detailed history and statistics about absentee and early voting, see John C. Fortier, *Absentee and Early Voting: Trends, Promises, and Perils* (AEI Press, 2006), pp. 7-39.

Conclusions about H.R. 281, H.R. 1646, and H.R. 1667

H.R. 281 and H.R. 1667 promote absentee voting. H.R. 281 requires that states adopt "no excuses" absentee voting, allowing them to cast an absentee ballot for any reason. H.R. 1667 promotes the adoption of vote-by-mail elections through a grant program to local jurisdictions. H.R. 1646 requires that states carefully track absentee ballots at each stage of the voting process. I will treat H.R. 281 and 1667 together and then return to H.R. 1646.

Advice to States on Absentee Voting

If I were testifying before a state legislature, I would urge caution in expanding absentee and vote by mail programs for many of the reasons stated above. Absentee and mail voting is convenient and liked by many voters, but it comes with a cost, especially the loss of the privacy of the ballot and additional opportunities for voter fraud. I would also

note that states have many options to improve the convenience of elections that do not involve expanding mail or absentee ballots.

First, I would recommend that states significantly improve the convenience of voting on Election Day. I would recommend longer voting hours, better poll worker training, better siting of more accessible polling places. States might also consider adopting Election Day vote centers or super centers as several counties in Colorado have tried. These vote centers allow voters to cast ballots at any location in their county, not just their home polling places. Early academic research has shown that these vote centers do increase turnout and attract new voters to the process.

Second, I would recommend to states that have not already done so to explore a period of early voting at polling place locations. This would contribute to the convenience of the voting process, while retaining the protections of the polling place. Many states that have adopted early voting at polling places allow such voting two to three week in advance of the election. Even a week of such voting would provide significant convenience to voters, but would not substantially lengthen the period of voting. Absentee voting, on the other hand, allows for voters to cast their ballots many weeks before Election Day.

With these forms of convenience voting available to voters, there would only be a small percentage of voters who would need absentee ballots.

Advice to Congress on Absentee Voting

Practice with respect to absentee, mail, and early polling place voting differs significantly from state to state. While expanded absentee and mail voting has been the choice of a number of states, I would urge Congress not to impose this choice on other states. Some states have clearly chosen the early polling place model as a form of convenience voting. Others have little voting before Election Day, but might want to adopt Election Day Vote Centers or early polling place voting in the future. Both the "no excuses" absentee mandate in H.R. 281 and the grant program in H.R. 1667 would have Congress weigh in and make this choice for states. It may well be that most states will adopt the mail and absentee voting model, but early polling place voting is growing rapidly as well, and it would be a mistake for Congress to take one side or the other.

H.R. 1646

H.R. 1646 would improve the practice of absentee balloting in America. No matter what your position is on "no excuses" absentee balloting or mail balloting, there is no question that there will be absentee voting in every state for those who cannot vote at polling places, and there will be substantially more absentee voters in states that encourage the practice.

Given the large numbers of voters casting absentee ballots, it is important for states to track and professionalize the administration of such ballots. While I am in many ways a critic of Oregon's vote by mail system, I recognize that Oregon does take the process of

casting a vote by mail seriously. Unlike many states, Oregon checks a signature on each absentee ballot received. It also has an organized system for tracking ballots. H.R. 1646 is of special importance to states which have recently expanded their percentage of ballots cast absentee. A simple message is: if you are going to rely heavily on absentee ballots, you need to upgrade your system of casting, tracking and counting such ballots.

The details of H.R. 1646 will need to be considered carefully. It may not be possible for states to have all aspects of the proposed tracking system by 2010, but the general thrust of the legislation is clearly in the right direction.

The CHAIRWOMAN. Thank you very much, Mr. Fortier.

And now we would welcome your testimony, Mr. Harrison.

STATEMENT OF WARREN HARRISON

Mr. HARRISON. Thank you, Madam Chair and members.

First of all, let me give the usual lawyer disclaimer. I don't work for the State of Texas anymore. And so, none of my comments are on behalf of the State of Texas. Any comments I make today are my own, based on my experiences when I did work there.

As I said in my statement, I came to work in the Secretary of State's office in the election division in 1987. I became the director of elections in 1988 and was there until 1995, when I moved over to another job in State government. I was very involved obviously in the elections process. I was also the founding director of a national group called the National Association of State Election Directors.

Prior to 1987, Texas had—we had what we called "two absentee"; we had absentee voting by personal appearance, and we had absentee voting by mail. And in personal appearance, you would go to the polling place, and if you were to vote absentee, you would have to sign an affidavit stating one of the reasons under the statute that you wouldn't be able to vote on Election Day.

At that time, I was practicing law in Harris County, which is Houston, and myself and a lot of judges, a lot of other lawyers stood in line and said we weren't going to be in the county on Election Day and voted absentee, although, quite honestly, we didn't know at the time if we would be in the county or not. But our dockets and our trials were such that we voted absentee.

In 1987, then-State Senator, now-Congressman Chet Edwards came up with a bill to change absentee voting by personal appearance and did so. And the legislature, in its wisdom, deleted all of the excuses that were needed to vote absentee by personal appearance. Again, it didn't impact the mail voting, just absentee by personal appearance. So after that point in time, you just had to go in and vote. You didn't have to sign an affidavit or anything. You just showed up to vote in what we now call "early."

In 1987, like in almost every odd-numbered year since the late 1800s, Texas held a constitutional amendment election on our State constitution, and we thought the turnout was going to be just tremendous because of this new, easy way to vote. And unfortunately, that didn't happen.

So we had elections, obviously, in 1988, 1989, and 1990. Some of the larger counties, especially, wanted to put these absentee-by-personal-appearance voting places in periods of high pedestrian traffic. But the law really didn't allow that because they said they all had to be open the same days and the same hours as the main location, which is the county courthouse. So, in 1991, the legislature again changed the law to say the Commissioners Court could establish branches that could be open on different hours and different days than the main polling place during absentee voting, and also changed all references to "absentee voting by personal appearance" to "early voting." So, since that time, we have called it "early voting" in Texas.

After the changes in 1991, there were two types of early voting or absentee by personal appearance that became prevalent. One was mobile voting, which I used to tell people was not driving around with a voting machine in the back of a pickup truck, but it would take one location and say that people could vote at this location, these hours, on this day, and move it again the next day.

That has worked very well, I can say, in Travis County, where the capital is located and where I live. Because of State government, the county clerk one day will have an early-voting polling place in one particular State building, all the employees get to vote, and then it will move to another.

We were concerned at the time about, if you can imagine, politics coming into effect and that someone just may stick these in a particular area where they wanted their voters, so to speak, to turn out. So we made sure that it had to be distributed properly and that proper notice was given to the voters.

The other thing that became prevalent was what we came to call retail voting, where they would use malls or grocery stores to hold early voting. In the last several years, I have voted in my local Randalls grocery store, where they have a polling place during every election. When I go back to Austin tomorrow, our early voting has begun for our next constitutional amendment election. I probably will go vote early tomorrow at that polling place. The voters love it; it is extremely convenient.

You know, we think that, "How could anybody not vote in Texas, because we made it so convenient," but they don't vote. As John said, turnout has not increased. We thought for sure this would increase turnout, and it didn't. All that has happened is that people that used to vote on Election Day now vote during this early period. So it hasn't increased turnout.

I don't have a lot of time to talk about mail voting. I am not a big proponent of mail voting because of the fraud that we have had in Texas in the past. And I am not exactly sure how to cure that. I know the legislature has tried with some signatures. But when I was director of elections, I know we tried several criminal cases that the Texas Rangers investigated for fraud in the mail-voting process.

Thank you very much.

[The statement of Mr. Harrison follows:]

STATEMENT OF WARREN T. (TOM) HARRISON TO THE HOUSE COMMITTEE ON ADMINISTRATION 110TH CONGRESS OCTOBER 22, 2007

My name is Warren T. (Tom) Harrison. I live in Austin, Texas. From March, 1988, to September, 1995, I was Director of Elections for five Secretaries of State of Texas: Jack Rains (R), George Bayoud (R), John Hannah, Jr. (D), Ron Kirk (D), and Tony Garza (R). I left the Secretary of State's office in September, 1995, to take a position as Executive Director of the Texas Ethics Commission. I retired from the State of Texas in December, 2002, and took a position with the Texas County & District Retirement System. I am currently Deputy Director and General Counsel of TCDRS.

I went to work in the Elections Division for the Secretary of State in March, 1987. During that session of the Texas Legislature, changes were made to the process of voting absentee in person in a bill introduced by then State Senator (now Congressman) Chet Edwards. Prior to September, 1987, if you wanted to vote absentee by personal appearance in Texas, you had to sign an affidavit stating that you were eligible under the statutory reasons, i.e. disabled, age 65 or over, confined to jail, religious reasons, poll worker on election day, or absence from the county on election day. A lot of voters signed an affidavit saying they would be out of the county on Election Day when they knew they would not just to avoid long lines on Election Day.

Under then State Senator Edwards' bill, all these statutory "excuses" were deleted allowing voters to vote during the period of absentee voting by personal appearance without having to sign an affidavit stating a reason. The law went into effect on September 1, 1987. There was a constitutional amendment election in November, 1987, and everyone involved in the elections process in Texas was very optimistic that we would have an overflow of voters voting absentee by personal appearance – but we were disappointed.

In the elections of 1988, 1989, and 1990, we kept waiting for the tide of voters to vote absentee by personal appearance, but they didn't appear. In 1990, several counties wanted to use locations for voting absentee by personal appearance that had high

volumes of traffic, e.g. shopping malls, They could not do so under the law as it required all locations to be open the same days and hours as the main location, usually the county courthouse. In 1991, the Legislature changed the law to allow Commissioners Courts to establish temporary branches for voting absentee by personal appearance that could have different hours and days of voting with the timeframe allowed by law for voting absentee by personal appearance (then 20 days to 4 days before Election Day). At the same time all references to "absentee voting" were struck from the statute and the word "early" was used from then on.

After the 1991 changes to the law, two types of early voting became prevalent, mobile voting and retail voting. Mobile voting was not voting on the back of a flat bed truck; it was establishing an early voting location at one location for certain hours on one day but move it to another location for certain hours on another day. The law requires proper notice of the locations, days, and times. Mobile voting is used very effectively in Travis County where the State Capitol and state government is located. Retail voting was making use of shopping malls, grocery stores, and other high traffic retail locations for early voting. I have voted early for several years at my local Randall's grocery store. The purpose of both mobile voting and retail voting wass to place the early polling places in areas of high pedestrian traffic. In other words, we were trying to take the polling places to the voters. It is very convenient and the voters "love" it.

However, it has never had the expected result of increasing turnout. It seems instead that many of the voters who would generally vote on Election Day have adopted early voting as their preference. When I left the Secretary of State's office in 1995, we were still optimistic that is was just an education process for the voters. I am not so sure that is the case anymore.

The CHAIRWOMAN. I thank you both.

We will now move to questions. And since this is the minority's witnesses, I would like first to, out of courtesy, recognize the ranking member, Mr. McCarthy, for his 5 minutes of questions.

Mr. MCCARTHY. Well, I appreciate that, Madam Chair.

And I first would like to go to Mr. Harrison, the former elections director for the State of Texas.

You briefly stated about the fraud when it came to mail voting. Could you elaborate on that, on some of the fraud that you have found in Texas when it comes to absentee mail voting?

Mr. HARRISON. We used to have what came to be known as, and sounds like a sexist remark, but bag ladies. What these ladies would do would be—and especially in the small city elections, they would go around and collect the ballots, especially from the elderly, the mail ballots, and then vote them and mail them in.

I have sat in many an early ballot board, back when I was director of elections, where they would compare signatures, and, you know, the signatures that had to be compared were even obvious to the human eye that it wasn't the same signature, and they would throw the ballots out. I remember one particular election in a little town called Bay City where they threw out 640 ballots because the signatures weren't the same.

And a lot of other cases where they would go in and someone would say they were going to assist—and, again, usually it was the elderly; sometimes it would happen in nursing homes—assist them in their balloting. But when the investigators would go back and talk with the voter, they never really marked the ballot. They told the individual, "I want to vote for X," but they never really knew whether that person voted for X or not.

I mean, that is the problem with mail balloting, is——

Mr. MCCARTHY. And you had the intimidation of the person not being——

Mr. HARRISON. Yes, sir.

Mr. MCCARTHY. To Mr. Fortier, the signature gathering—an interesting thing; unfortunately you weren't invited to the other panel hearing that we had, but in there we had a Secretary of State from Maine. And I was asking her the question about signatures, verifying them. Her answer to me was, "We don't ask for signatures in Maine. We know everyone."

Now, I have concern—because, in California, they have what they call bounty, where both parties go out and hire people to sit at a shopping center and get voter registrations. If someone takes the ballot and fraudulently fills it out and signs it, couldn't they apply for an absentee and, at the same time, still vote and it be counted because the signatures would match?

Mr. FORTIER. I think the signature-checking procedures vary greatly from State to State. I have indicated that I am not a big fan of vote by mail. But Oregon, which is 100 percent vote by mail, actually has a system of checking every signature, to their credit. Many States do not, or have less serious procedures. There is training and some seriousness of purpose in Oregon.

So I guess I do worry that, in many places, there is this requirement that is something of a formality, and it is not followed through on as thoroughly as it might be.

Mr. MCCARTHY. I read in your bio that you had academically studied about elections and voting and patterns. Voting in person or voting by mail, which one brings about the greatest form of fraud, when there is fraud?

Mr. FORTIER. I think it is very difficult to measure fraud. What I like to say is I believe there are additional opportunities for fraud in voting by mail. Certainly, you could find, in every stage of the process, ways in which people would like to get at our elections, and we would be wise to protect against them in all forms. But, certainly, when a ballot leaves the polling place, there is no one to watch over it. There are no—we don't have both parties, representatives from both parties, there to raise objections to certain things that might be done with the ballot, like we do at the polling place.

What I didn't discuss in my testimony—and I have a book on absentee and early voting—is some of the early history of absentee voting. It especially came about in the era after we put in the secret ballots. And those who put in the secret ballots did so to combat a lot of corruption and big-city machines. And that memory was still there for the people who instituted absentee balloting. They wanted to preserve some amount of privacy, with the witness requirements and the signature requirements and the stating a reason. That was all coming out of the idea that we cared about the privacy of the ballot, as well as giving those people who needed absentee ballots the absentee ballot that they needed to vote.

Mr. MCCARTHY. But you still believe in allowing choice, like early voting in person, because you get the privacy to go in and you don't have the intimidation, and even maybe the intimidation around a kitchen table or not to vote with your spouse, even though you disagree with your spouse.

Mr. FORTIER. I would like to separate fraud and coercion. There may be a gray line in between. But, certainly, we are protected from coercion at the polling place because, no matter what the pressures, if we go in and secretly cast our ballot, then we can do what we like. With an absentee ballot, it is not always clear that a voter can do that. Either subtly pressured or overtly pressure, somebody might see that ballot and say, "Look, you filled it out right," or, "You haven't filled it out right."

Mr. MCCARTHY. Thank you very much.

I yield back.

The CHAIRWOMAN. Does the gentleman from Texas have questions?

Mr. GONZALEZ. I just have a real quick one for Mr. Fortier.

You indicated that there is no empirical evidence, there is no evidence that the easier you make it to vote, such as mail-in ballots in Oregon, results in increased voter participation. If you could elaborate on that?

Mr. FORTIER. Yes. I think the theory is, if you remove the obstacles, they will come and they will vote. And we have tried that in a number of areas, and it has not always worked out that way.

I will say that both, as Mr. Harrison indicated, in voting early at polling places but also voting by mail, either the Oregon system or States that have expanded their absentee balloting, we have not seen—a number of studies really have not seen a significant increase in voting.

But the exception is this: in the very low turnout elections. Essentially, what we do is we move voters around. We find voters who are habitual voters who are going to vote, whether they have to go to the polling place or whether they are choosing to mail in their ballot or they are going to an early place, they tend to vote in roughly the same rates. These methods of early voting in polling places and absentee voters also do not increase—get new voters to the polling place.

The only new method which I would recommend us looking at more, which Colorado has instituted, is these voting super-centers where, on Election Day, they are well-situated; you can go to any one in your county. There has been some evidence that there is a rise in turnout and attraction of new voters.

My main message is there are other convenience methods; we should look at them. And many States may choose to go a different route than absentee balloting, and we may not want to put that on them.

Mr. GONZALEZ. I was under the impression that no-excuse absentee voting—and, of course, Oregon is all mail—did result in some increase in Oregon. I mean, that would not be accurate?

Mr. FORTIER. Well, the problem is that you have in Oregon a State that was a high-percentage-voting State before they instituted vote by mail and has been a high-voting State after it instituted voting by mail. It is not clear we can attribute the high voting to the mail voting. It is broader; it has to do with the political culture.

So there are some individual studies that show small amounts of increases. There are some studies that show decreases. There are some studies that show an essentially nonstatistical increase. But the general consensus among academics is that voting by mail and voting at polling places do not show increases in turnout, with the exception of that caveat I mentioned earlier, that the local elections that are going to have very low turnout, then you do get habitual voters willing to send in their mail ballots.

Mr. GONZALEZ. Thank you very much.

I yield back.

The CHAIRWOMAN. The gentleman yields back.

The gentleman, Mr. Ehlers, is recognized for his 5 minutes.

Mr. EHLERS. Thank you, Madam Chair.

First of all, I would like to enter an opening statement into the record.

The CHAIRWOMAN. Without objection, it will be entered into the record.

[The statement of Mr. Ehlers follows:]

Opening Statement

[After Chairwoman Lofgren's opening remarks]

I would like to thank the Chairwoman and Ranking Member for their remarks, and welcome our witnesses this evening.

Election reform issues demand scrutiny and diverse perspectives from a broad range of experts. Therefore, I especially appreciate our witnesses' willingness to come and testify before this Subcommittee on this important matter.

As I mentioned last week, I have three primary concerns with the legislation that would vastly expand absentee ballots beyond those who need them.

First, there is the increased chance of voter fraud whenever a vote is cast from an unsecured location, as is the case with vote-by-mail. One of the distinct advantages of visiting a polling place is the controlled environment that provides safeguards against voter coercion.

Second, the voter rolls that determine who receives a ballot are often outdated and inaccurate. There will always be those individuals who take advantage of those flaws to cast an illegal vote by mail, where verifying the identity of the voter is not always possible.

Third, is the misperception that vote-by-mail programs will increase voter turnout. In the state of Oregon, statistics have not shown a measurable increase in the number of voters who cast a ballot, instead, they indicate that voters who once cast a ballot in person are now doing so by mail.

I believe it's important to explore these and other issues before placing additional mandates on the states regarding how they run their elections.

Again, thank you to our witnesses for their participation, and I look forward to hearing your thoughts on these and other issues related to vote-by-mail legislation.

Mr. EHLERS. I appreciate the testimony. Both of you have said essentially the same thing, that these various methods, which are ostensibly started out as a way to increase turnout, did not increase turnout, but they may have increased convenience. Am I summarizing it correctly?

Okay. So there is no reason to set up these alternate methods for increasing turnout. There may be good reason to increase convenience. And that certainly is fine with me, as long as we can assure the sanctity of the ballot.

And that has been my greatest concern. It stems from an incident we had a number of years ago on this committee, where I was put on one of the committees to examine a contested election. And we held a hearing in the community where the election took place. And it was astounding. You know, people were under oath, they had to tell the truth. It was astounding how much corruption we unveiled just in a 2-hour hearing. And that convinced me that there is still fraud alive and well in this country, although not everywhere, but certainly in certain places.

And my concern about the early morning, if it is not done in a polling place or the voting by mail, any of these, is that it increases the opportunities for corruption, for fraud. It does not guarantee it, because every community is different, and in some communities the people tend to be very straight-arrow on voting. Other communities are not. And you certainly increase the opportunity for fraud.

Would you agree with that statement?

Mr. FORTIER. I do. I think fraud is a hard thing to measure overall.

Mr. EHLERS. Right.

Mr. FORTIER. And we can all debate whether there is a lot of fraud, a little fraud, where it is. But I do think that there are some additional opportunities when the ballot leaves the protections of the polling place.

Mr. EHLERS. Yeah. And that is the difficulty I have with it. The absentee ballot was instituted as a means of providing the opportunity to vote for people who cannot go to the actual voting place. And even though there is a chance of increased fraud there, I think it is fairly small. If you have citizens who are diligent about voting and want to vote even if they are out of town or ill, you are not likely to encounter much fraud.

If you have early voting or other mechanisms, then you really open the door for fraud. And that is a big concern of mine, because I have seen it in action. And, of course, the history of our Nation is not without fraud, whether it is Tammany Hall or the Pendergast machine or the Daley machine that—I wouldn't accuse the present Mayor Daley of that, but I have heard enough stories about the previous mayor and various other parts of the country where fraud was rampant. It really opens the door.

I am intrigued by your comments about voting convenience, which I think is a legitimate thing to do as long as it is supervised. And when you use that term, you are mostly referring to that, aren't you, the super-centers or locating it in stores or things like that, or allowing people to vote in places other than their normal voting place? That is all purely for convenience, correct? But you still have all the controls you would otherwise?

Mr. FORTIER. There are, in many of the early-voting centers, basic protections of the polling place that you would have on Election Day. The States do these in various ways, but I think a lot of them are worth looking at.

And the numbers are so big, the increases are so big, in both absentee voting and in early voting at polling places, that I think there is a demand for convenience, especially in the Western States and a number of Pacific States, that we shouldn't look down at the idea of convenience. But I am for doing it in a way that keeps those protections of the polling place.

So I am more open to doing some things on Election Day: longer polling hours; going toward super-centers, at least experimenting with them; and also some period of early voting. I prefer it not to be too long, because I have some concerns about a long, long election. But a week or 10 days of voting certainly does provide a convenience to people who would want to vote on those other days.

So I think there are a lot of convenience things we can look at that are not absentee voting.

Mr. EHLERS. I find it interesting that, in our Nation, we have States advocating early voting, mail-in voting, all these things which increase the probability of fraud, and we have other States passing voter ID bills, trying to decrease fraud.

The CHAIRWOMAN. The gentleman's time has expired.

Mr. EHLERS. Just one last comment. I really am very skeptical about this, and I hope we look at it very carefully before we do anything on it——

The CHAIRWOMAN. The gentlelady from California is recognized.

Mrs. DAVIS of California. Thank you, Madam Chair.

And I appreciate your testimony.

I wanted to go to one of the issues that you raised, Mr. Fortier, in your testimony. I don't think you raised it here in the same way. But the voting error rate, could you give me some sense of that?

Because I think you were suggesting that it could be greater for absentees than for op scans. And I wonder what your take is on the election of Florida, where there were 18,000 undervotes. Have you seen 18,000 undervotes ever in an absentee?

Or, what we are told is that there are actually relatively few, and that, in fact, in that election, absentee undervotes were a pretty normal, average number. How can you explain that?

Mr. FORTIER. Well, what I try to say in my testimony is that I don't think we have enough information about this. And I do recommend, from whatever avenue, that there be a much more serious look at this.

My main point is this, that there are—Congress has, in the Help America Vote Act, called for error-checking provisions that occur at the polling place, whether it is through DREs or Opti-Scan, where they warn you that you—they will prevent you from overvoting or they warn you that you have undervoted.

Now, those mechanisms are not perfect, and we may have ballot design problems, other problems, which we should improve. But those protections, at least if put in place at the polling place, allow some voters to get their ballots counted that otherwise would not be counted.

If you fill out an absentee ballot and you accidentally vote twice for president, because of ballot design or whatever, there is no way for you to come back and correct that error like there is at the polling place.

So I cannot tell you that the error rate is higher or lower. But because of that opportunity, we have that concern. So I am for more research, but I cannot tell you today that there is research that says it is lower. It is a concern, not a finding.

Mrs. DAVIS of California. Okay. I believe people actually can go to the registrar if they feel that they have done that, someone with an absentee vote, but——

Mr. FORTIER. But often they don't know. That is the thing. They do it, and they are unaware that they have voted twice or left a ballot—and then there is no way to check it.

Mrs. DAVIS of California. Yes. Okay.

I wanted, also, to just talk a little bit about the convenience issue. Because I am not sure—are you suggesting that, you know—I think you said convenience is okay, but we wouldn't want voters to vote too early or to, perhaps, vote leisurely at home so that they might, you know, not have the certain pressure that they have at the voting booth.

Is that what you said? Or, could you define that——

Mr. FORTIER. I am actually for convenience in voting. I don't think we should look down at it at all. Some people say, "Well, it doesn't increase turnout, but it is convenient, and that is not enough." I think convenience is both important and it is also demanded by the public.

My concern is that there are different ways to get at convenience. And whether that is improving Election Day by various methods or—I think early voting at polling places also provides a level of convenience and is popular in places like Texas. I prefer those because they have the protections of the polling place.

What I said about the length of the election, I do fear that someone voting for 6 weeks before an election may miss out on important information; there may be developments. I think it strays away from a, kind of, concentrated period where we focus on the election. So I am for a shorter period, but I don't have a definite time—a week, 10 days. Absentee ballot, by definition, is coming out 45 days beforehand. That is my concern.

Mrs. DAVIS of California. Yes. Thank you.

And, Mr. Harrison, I appreciate—you were talking mostly about early voting, and I certainly would encourage all kinds of ways of doing that. I think that the difficulty is that you still need a number of people to be trained and responsible and taking care of those polling places, as well. And for a number of counties, they find that to be difficult. They have a tough time getting people on Election Day itself. And that is why many registrars across the country do acknowledge that, in fact, it does assist them greatly to have people to have that opportunity. So I——

Mr. HARRISON. Yes, maam.

Mrs. DAVIS of California [continuing]. Certainly would want that to be clear, that this doesn't, in any way, say, "This is better than that." If early voting can be held well in a county and in a State, that is a good thing, especially if it gives that people the ability to

do that. But many people, that is not a reality for them. And, in fact, they find longer lines for early voting than they would during Election Day.

Mr. HARRISON. Definitely, they do.

The CHAIRWOMAN. The gentlelady's time has expired.

Mrs. DAVIS of California. Thank you.

The CHAIRWOMAN. At this point, I would just like to make note that it was actually the Secretary of State of Vermont who was at our hearing last week, not Maine; and note that the names of these witnesses were not sent to us last week.

And, with that, this hearing is adjourned, with thanks to the witnesses.

[Whereupon, at 6:07 p.m., the subcommittee was adjourned.]

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