

VOTER ID TRIAL FACT SHEET

DOJ: 50,000 DEAD VOTERS LACK PHOTO ID

Evidence presented at trial by the State of Texas shows that Attorney General Holder's list of voters who lack government-issued photo identification is fatally flawed because DOJ's list includes dead voters, failed to exclude non-Texas residents, and did not attempt to match voters with photo ID databases maintained by the federal government—such as the State Department's passport database or the Department of Defense's military identification database.

DOJ's List of Voters Who Lack Photo Identification Includes:

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| 50,000 | Dead Voters ¹ |
| 330,377 | Voters over the age of 65 (who can vote by mail without ID) ² |
| 261,887 | Voters who included a DL number on their voter registration form. ³ |
| 800,000 | Voters successfully matched by the State ⁴ |
| Countless | Voters <u>who actually have a government-issued photo ID</u> —but who were improperly included on the DOJ's no-identification list, including: <ul style="list-style-type: none">- Director of Elections Keith Ingram—not once, but <u>twice</u>.⁵- U.S. Senator Kay Bailey Hutchison⁶- Former U.S. Senator Phil Gramm⁷- State Senator Leticia Van de Putte⁸- State Representative Aaron Peña⁹- Former President George W. Bush¹⁰- Licia Ellis, the wife of State Senator Rodney Ellis¹¹ |

DOJ's List of 'No-Identification' Voters Failed to Exclude:

- Dead Voters¹²
- Voters who have passports and military IDs¹³
- Former Texas residents who have moved to other states¹⁴
- Exempt voters who have been certified disabled by the federal agencies¹⁵
- Non-citizens who are improperly registered to vote¹⁶

Survey: 90% of Voters on DOJ's No-ID List Report Having Photo ID

A University of Texas professor retained by the State conducted a telephone survey that sampled actual Texans on the DOJ's no-identification list—and found that more than 90% reported having a government-issued photo ID:

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|-----|--|
| 90% | of whites on the DOJ's no-identification list have a photo ID ¹⁷ |
| 93% | of blacks on the DOJ's no-identification list have a photo ID ¹⁸ |
| 92% | of Hispanics on the DOJ's no-identification list have a photo ID ¹⁹ |

DOJ'S Flawed Process Prioritized Large Numbers Over Accurate Results

Although Attorney General Holder claims that individuals on his no-identification list reflect Texas voters who will somehow be adversely impacted by Texas' voter ID law, the expert witness who formulated the DOJ's 'no-identification' list acknowledged—in sworn testimony—that the list did not analyze how many actual, eligible voters would be impacted by the voter ID law:

“I was not asked to weigh-in on the question of whether or not they would be able to vote.”²⁰

“We are trying to determine who has an ID, not who is an actual eligible voter.”²¹

Although Attorney General Holder's own expert witness requested access to federal passport and military identification databases so that he could attempt to match state voter registration records to federally-issued photo IDs, the Justice Department rejected the request and refused to allow its expert access to the federal government's records.

“I did not have access to any of the federal identification data set—databases such as the military database or the social security database. We inquired about getting access to those databases but could not.”²²

Referring to his client's refusal to make federal databases available to him, the DOJ's expert further testified:

“It would be great to know those other ID forms, but we were not allowed access to those databases.”²³

DOJ Expert: “Almost No One” Prevented From Voting State Rep: “I Mischaracterized” Mother's Lack of ID

Under the voter ID law, any Texan who lacks a photo ID can obtain one free of charge from the Texas Department of Public Safety. Nonetheless, partisans who oppose a photo identification requirement for voters have repeatedly claimed that the law will ‘disenfranchise’ Texas voters. After a weeklong trial, both the DOJ—and voter ID opponents who intervened in the case—failed to produce a single Texan who will be unable to vote because of the photo ID requirement. Further, the State successfully showed that the photo ID requirement applies equally to all Texans and that no minority group will be disproportionately impacted by SB 14.

AFTER WEEK-LONG TRIAL, VOTER ID OPPONENTS FAIL TO IDENTIFY ANY TEXAS VOTER WHO CANNOT OBTAIN PHOTO ID

During the 2011 legislative session and in public pronouncements since then, **State Rep. Trey Martinez Fisher** has repeatedly stated that his 73-year-old mother did not have a driver's license—and cited her as anecdotal evidence of a Texan who the voter ID law would adversely impact. Under oath at trial, however, Rep. Fisher acknowledged

that his mother has a Texas Driver's License and testified that she renewed it as recently as August, 2011:

*"I mischaracterized the fact that she didn't have a driver's license."*²⁴

Another prominent legislative opponent of the Texas' voter ID law, **State Rep. Rafael Anchia**, testified that he has studied voter identification requirements extensively as a member of the House Elections Committee in 2005, 2007, and 2009—and participated in interim legislative studies "*on the issue of photo identification.*"²⁵ Despite his vigorous opposition to the voter ID law and his extensive study of the issue, during his testimony, Rep. Anchia conceded that he did not know of a single registered voter in the State of Texas who lacks the photo identification necessary to vote under the voter ID law.²⁶

During her testimony at trial, **Lydia Camarillo, Vice President of the Southwestern Voter Education Project**, testified she could only identify two voters in the entire State of Texas who do not have state-issued photo identifications—"the Rodriguez sisters."²⁷

One of the two "Rodriguez sisters," **Victoria Rodriguez**, a college student from San Antonio and the only voter (out of 13 million in Texas) that either the intervenors—or the DOJ—could produce at trial in support of their contention that voters who lack photo IDs will be unable to vote. During Ms. Rodriguez' testimony, however, those claims fell apart when she testified that she possesses a "*birth certificate,*" a "*voter registration card,*" and a "*social security card.*"²⁸ Under state regulations, only two of the three forms of identification possessed by Ms. Rodriguez are necessary for her to obtain an Election Identification Certificate free of charge from the DPS.

At trial, Ms. Rodriguez testified that she did not have a car and that her parents were too busy to take her to the local DPS office so that she could obtain a free Election Identification Certificate. Ironically, however, Ms. Rodriguez explained in detail how she had no trouble securing transportation to the San Antonio airport, flying more than 1,500 miles to Baltimore, and catching a train to Washington DC so that she could testify in federal court about her inability to get to the DPS office back in San Antonio.²⁹

DOJ'S EXPERT WITNESS ACKNOWLEDGES THAT HIS ACADEMIC RESEARCH SHOWS VOTING NOT AFFECTED BY ID LAWS

Although the Justice Department maintains that Texas should not be allowed to implement its voter ID law because it will interfere with minority voters' ability to participate in the electoral process, the DOJ's own expert witness, **Professor Stephen Ansolabehere** has extensively studied the impact of voter ID laws—and has published academic research finding that just the opposite is true.

Citing a nationwide survey of 36,500 U.S. voters that was conducted under a joint study by 30 universities, Professor Ansolabehere found the following about voter ID laws:

*"The real lesson from the data is that the total number of people who said they were not allowed to vote because of voter ID requirements is trivially small."*³²

“The number of people who said they were excluded from the polls as a result of voter ID requirements, however, approaches that limit. Only twenty-three people out of 36,500 said that they were excluded from the polls because of voter identification.”³²

*“**Voter identification is the controversy that isn't.** Almost no one is excluded by this requirement.”³²*

*“**Over 70% of whites, blacks, and Hispanics support the requirement.** Black and Hispanic voters did not express measurably less support for voter ID requirements than whites.”³²*

*“These **findings undercut much of the heated rhetoric** that has inflated the debate over voter ID requirements in the United States.”³²*

*“That **almost no one is prevented from voting because of voter ID requirements casts doubt on arguments from the left that this amounts to a new poll tax or literacy test.**”³²*

“The poll tax, literacy test, and other tools of the Jim Crow laws are powerful metaphors derived from a very ugly period in American history, but ID requirements in practice today bear only the palest resemblance to such discriminatory practices.”³²

*“These facts strongly suggest that **there may be little or no voting rights issue involved in the dispute over voter ID rules,** and no question of fraud either. This is **hardly the stuff of the Civil Rights Movement,** or the mid-1950s when only 25% of southern blacks were registered, and fewer still were allowed to vote.”³⁰*

BLOATED VOTER ROLLS...AND MORE DEAD VOTERS

During the voter ID trial, the **Texas Secretary of State's Director of Elections** testified that, as recently as the May 2012 elections, hundreds of votes may have been cast in the name of voters who are deceased:

“We believe 239 folks voted in the recent election after passing away.”³¹

In response to a question asking how many of the 239 deceased voters' ballots were cast by **someone who appeared in person at the polling place**, the Director of Elections replied: **“two hundred and thirteen.”**

Explaining that the Secretary of State's Office recently learned that thousands of deceased individuals are still registered to vote in Texas:

“We learned that there was a list of 50,000 [deceased] voters that were registered with active voter unique identification numbers.”³²

During his voter ID trial testimony, **Sen. Tommy Williams** testified that his grandfather died in 1935—but that ballots continued to be cast in his name more than 60 years later.³³

Although Texas counties are legally required to maintain up-to-date voter registration rolls, testimony by the Director of Elections revealed that:

- Travis County has not removed deceased voters from the rolls in five years: “Travis County had failed to cancel any of the strong match deceased voter tasks that we had sent them since...2007.”³⁴
- Eighteen Texas counties have more people on the voter rolls than actually live in the county.³⁵
- “Since September 1st of 2011, 394 persons have been cancelled from the voter rolls for non citizenship.”³⁶

DOJ EXPERT: I SHOULDN’T HAVE TRUSTED WIKIPEDIA; JUSTICE O’CONNOR PROMOTED WHITE SUPREMACY

J. Morgan Kousser, a Californian with no professional experience in the Texas Legislature or Texas elections, was hired by Attorney General Holder to serve as an expert witness on the Texas Legislature’s purported intent when the SB 14 was passed. The DOJ’s controversial expert provided testimony that was riddled with errors—at least one of which Kousser conceded resulted from his use of Wikipedia to prepare his expert report for the Justice Department—and included ‘findings’ based on his 1999 book, which concluded that former U.S. Supreme Court Justice Sandra Day O’Connor sought to “redeem” white supremacy.

Kousser’s expert report relied on an analytical framework that he created for his 1999 book, *Colorblind Injustice*. Although Kousser has never actually lived or worked in Texas—and does not have any actual experience or unique knowledge about the Texas Legislature—he invokes the ten so-called ‘factors’ delineated in *Colorblind Injustice* to justify his conclusion that the Texas Legislature acted with a discriminatory purpose when it enacted SB 14.³⁷

Kousser: Justice Sandra Day O’Connor Promoted White Supremacy

When Kousser testified during the voter ID trial, counsel for the State of Texas asked about his conclusion in *Colorblind Justice*, where Kousser argues that Justice O’Connor’s *Shaw v. Reno* opinion—which was joined by Chief Justice Rehnquist, Justice Kennedy, Justice Scalia, and Justice Thomas—had the effect of promoting white supremacy:

State: *And the opinion you're expressing at the end of your book, the book that's cited in your report in this case, is that Justice O'Connor authored, and that Chief Justice Rehnquist, Justices Kennedy, Scalia, and Thomas joined an opinion that employed colorblind rhetoric that had the effect of promoting white supremacy. Right?*

Kousser: *That's correct.*³⁸

Although the Supreme Court’s decision upholding Indiana’s voter ID law—which was written by Justice John Paul Stevens—governs the federal court’s decision in the Texas voter ID case, Attorney General Holder’s expert witness in Texas’ voter ID case stated that he objects to the high court’s ruling:

State: *And of course you think Crawford was wrongly decided. Right?*

Kousser: *I agree with you...I do not like the Crawford decision.*³⁹

Excerpts from Kousser’s Testimony on Behalf of the Justice Department

As an expert witness for Attorney General Holder, Kousser also testified:

- Republican African-American and Hispanic legislators are not “legitimate representatives” of minority communities.⁴⁰
- “*But he’s white*”—after learning that an Anglo Democrat who represents a majority-Hispanic House District voted for the voter ID law.⁴¹
- All legislators who voted for SB 14—including 5 Hispanics and 2 African-Americans—were motivated by racially discriminatory purposes.”⁴²
- There could be states that could enact voter ID laws without a discriminatory purpose, but “*Texas is not one of those places.*”⁴³
- The Texas Attorney General should ignore documented evidence of voter fraud and instead “*spend all his time*” prosecuting environmental violations.⁴⁴
- “*Even if a majority of Hispanics support voter ID, it has a discriminatory purpose.*”⁴⁵
- To the extent African-Americans and Hispanics support voter ID laws, it is only because they were manipulated and misled by Republicans.⁴⁶
- “*I would generally characterize myself as a liberal.*”⁴⁷
- Voter fraud is “*really quite easy to find and prosecute,*” a position that is at odds with experienced state and federal law enforcement officials.⁴⁸

A Sampling of Kousser’s False Statements

Repeatedly questioned at trial about false and inaccurate statements, Kousser conceded that he had relied on research from Wikipedia when he prepared his expert report for the Department of Justice.

- Testimony: Senator Leticia Van de Putte was “Senate Minority Leader.”⁴⁹
Fact: The Texas Senate does not have a Majority Leader or a Minority Leader.
- Testimony: Rep. Patricia Harless was Chair of the Elections Committee in 2011.⁵⁰
Fact: In 2011, the House Elections Committee Chair was Larry Taylor.
Response: “Seems I was wrong. Sorry.”⁵¹
- Testimony: Rep. Harless represented an “overwhelmingly” white district.⁵²
Fact: 42.9% of the voters in Rep. Harless’ district were white.
Response: “I tell my students not to trust Wikipedia. I should not have.”⁵³
- Testimony: Republican “majorities” forced rules changes to prevent chubbing.⁵⁴
Fact: HR 4 enacting the anti-chubbing rules passed unanimously 143-0.⁵⁵
Response: “In the 2009 chub, there were some Democrats who were quite put off.”⁵⁶

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- ¹ Deposition of Stephen Ansolabehere, June 22, 2012 at p. 97.
- ² Testimony of Prof. Thomas Sager Trial Transcript, Tuesday, July 10, 2012, Vol. I at p. 25
- ³ Testimony of Prof. Thomas Sager Trial Transcript, Tuesday, July 10, 2012, Vol. I at p. 26.
- ⁴ Testimony of Prof. Thomas Sager Trial Transcript, Tuesday, July 10, 2012, Vol. I at p. 26.
- ⁵ Testimony of B. Keith Ingram Trial Transcript, Monday, July 9, 2012, Vol. I at p. 74.
- ⁶ Testimony of Stephen Ansolabehere, Trial Transcript, Thursday, July 12, 2012.
- ⁷ Testimony of Stephen Ansolabehere, Trial Transcript, Thursday, July 12, 2012.
- ⁸ Testimony of Stephen Ansolabehere, Trial Transcript, Thursday, July 12, 2012.
- ⁹ Testimony of Stephen Ansolabehere, Trial Transcript, Thursday, July 12, 2012.
- ¹⁰ Testimony of Stephen Ansolabehere, Trial Transcript, Thursday, July 12, 2012.
- ¹¹ Testimony of Sen. Rodney Ellis, Trial Transcript, Wednesday, July 11, 2012, Vol. II at p. 48.
- ¹² Deposition of Stephen Ansolabehere, June 22, 2012 at p. 97.
- ¹³ Deposition of Stephen Ansolabehere, June 22, 2012 at p. 18.
- ¹⁴ Deposition of Stephen Ansolabehere, June 22, 2012 at p. 159.
- ¹⁵ Deposition of Stephen Ansolabehere, June 22, 2012 at p. 109.
- ¹⁶ Deposition of Stephen Ansolabehere, June 22, 2012 at p. 276.
- ¹⁷ Testimony of Prof. Daron Shaw, Trial Transcript, Wednesday, July 11, 2012, Vol. I, at p. 35.
- ¹⁸ Testimony of Prof. Daron Shaw, Trial Transcript, Wednesday, July 11, 2012, Vol. I, at p. 35.
- ¹⁹ Testimony of Prof. Daron Shaw, Trial Transcript, Wednesday, July 11, 2012, Vol. I, at p. 35.
- ²⁰ Deposition of Stephen Ansolabehere, June 22, 2012 at p. 161.
- ²¹ Deposition of Stephen Ansolabehere, June 22, 2012 at p. 92.
- ²² Deposition of Stephen Ansolabehere, June 22, 2012 at p. 19.
- ²³ Deposition of Stephen Ansolabehere, June 22, 2012 at p. 109.
- ²⁴ Testimony of Rep. Trey M. Fischer, July 10, 2012, at p. 15.
- ²⁵ Testimony of Rep. Rafael Anchia, Trial Transcript, Tuesday, July 10, 2012, Vol. II at p. 23.
- ²⁶ Testimony of Rep. Rafael Anchia, Trial Transcript, Tuesday, July 10, 2012, Vol. II at p. 44.
- ²⁷ Testimony of Lydia Camarillo, Trial Transcript, Wednesday, July 11, 2012, Vol. I at p. 145.
- ²⁸ Testimony Victoria Rodriguez, Trial Transcript, Wednesday, July 11, 2012, Vol. I at p. 9.
- ²⁹ Testimony Victoria Rodriguez, Trial Transcript, Tuesday, July 10, 2012, Vol. II at p. 130-131.
- ³⁰ Stephen D. Ansolabehere, *Access Versus Integrity in Voter Identification Requirements*, 63 N.Y.U. ANNUAL SURVEY OF AMERICAN LAW 613 (2008).
- ³¹ Testimony of B. Keith Ingram Trial Transcript, Monday, July 9, 2012, Vol. I at p. 66.
- ³² Testimony of B. Keith Ingram Trial Transcript, Monday, July 9, 2012, Vol. I at p. 65.
- ³³ Testimony of Sen. Tommy Williams, Trial Transcript, Monday, July 9, 2012, Vol. II at p. 100.
- ³⁴ Testimony of B. Keith Ingram, Trial Transcript, Monday, July 9, 2012, Vol. I at p. 53.
- ³⁵ Testimony of B. Keith Ingram Trial Transcript, Monday, July 9, 2012, Vol. I at p. 55.
- ³⁶ Testimony of B. Keith Ingram Trial Transcript, Monday, July 9, 2012, Vol. I at p. 57.
- ³⁷ Trial Transcript, Tuesday, July 10, 2012, Vol. II at p. 82 (*see, e.g.* Q: “[There are] 10 different factors [for determining discriminatory purpose] that you identify in your book *Colorblind Injustice*. Correct?” A: “That’s correct.” Q: “And those are the factors that you are using. They’re like your analytical framework that you’re using to get at your opinions in this case. Correct?” A: “Right”).
- ³⁸ Trial Transcript, Tuesday, July 10, 2012, Vol. II at p. 87-88.
- ³⁹ Trial Transcript, Tuesday, July 10, 2012, Vol. II at p. 91.
- ⁴⁰ Trial Transcript, Tuesday, July 10, 2012, Vol. II at p. 103.
- ⁴¹ Trial Transcript, Tuesday, July 10, 2012, Vol. II at p. 104.
- ⁴² Trial Transcript, Tuesday, July 10, 2012, Vol. II at p. 88.
- ⁴³ Deposition of J. Morgan Kousser, June 20, 2012 at p. 87.
- ⁴⁴ Deposition of J. Morgan Kousser, June 20, 2012 at p. 211.
- ⁴⁵ Deposition of J. Morgan Kousser, June 20, 2012 at p. 269.
- ⁴⁶ Deposition of J. Morgan Kousser, June 20, 2012 at p. 280.
- ⁴⁷ Deposition of J. Morgan Kousser, June 20, 2012 at p. 32.
- ⁴⁸ Deposition of J. Morgan Kousser, June 20, 2012 at p. 177.
- ⁴⁹ Trial Transcript, Tuesday, July 10, 2012, Vol. II at p. 64.
- ⁵⁰ Trial Transcript, Tuesday, July 10, 2012, Vol. II at p. 99.
- ⁵¹ Trial Transcript, Tuesday, July 10, 2012, Vol. II at p. 100

⁵² Trial Transcript, Tuesday, July 10, 2012, Vol. II at p. 100.

⁵³ Trial Transcript, Tuesday, July 10, 2012, Vol. II at p. 99-100.

⁵⁴ Expert Report of J. Morgan Kousser, June 1, 2012, at p. 8.

⁵⁵ H.J. of Tex., 82nd Leg. R.s. 232-233 (Jan. 24, 2011).

⁵⁶ Deposition of J. Morgan Kousser, June 20, 2012 at p. 269.