ATTACHMENT A

Afffidavit regarding Election Even "Robo Call"

Theodore E Downing declares that:

1. I am a former, two term state legislator who represented part of Tucson, Legislative District 28 in the House of Representatives. As a member of the Judiciary Committee, I specialized in election integrity legislation.
2. I reside at 1402 E Kleindale Rd., Tucson, Arizona 85719. I am also on the University of Arizona Faculty for 43 years, holding a PhD from Stanford.
3. On November 5, 2012 around 7:20 PM, the night before the General Election, I received a robo call on my home phone number, which I share with my wife Carmen Garcia. My home number is 520 323 8766.
4. The automated call was a recording and entirely in Spanish. I am bilingual, fluent in Spanish.
5. The report said, in Spanish, it had important information from the Commision Federal de Elecciones (Federal Election Commission). It claimed to be very concern that the Commission wanted the listener to know "you have every right to vote." And it reminded the listener "to bring all your identification in Spanish in order to vote."
6. I did not have time to record the message but I was stunned that it was asking the voter ID documents be in Spanish.
7. My caller ID showed the number came from 484 891 5646. I called the number and it was answered by a telemarketing service.
8. I have no doubt that this robocall an attempt to suppress Hispanic votes, as the voter identification documents we use in Arizona are NOT printed in Spanish. I am also sure this call was intended for my Spanish speaking wife, who is on the voter rolls.

I declare, under penalty for perjury, that the foregoing is a true and correct statement. Excecuted on 28 Dec 2012.

Theodore E Downing

ATTACHMENT B

Declaration Regarding Election Eve "Robo-call"

William J. Risner, declares as follows:

1. Around 7:35pm on November 5, 2012, the evening before the general election, I received a telephone call at my home phone- (520) 743-0228.

2. The "caller" was a recording of the type that is known as a "robo-call". The content was entirely in Spanish.

3. I was able to understand the content of the call. I did not record the call but did make written notes during the call.

4. The recording purported to be from a national group whose function was to protect Hispanic voters rights. It said "you have every right to vote," and to help you vote "there will be people to help you vote and ballots and materials in Spanish." the call directed me to "bring all of your identification documents including your drivers license in Spanish" to the polls with me.

5. I couldn't write down more of the statement but there was more. The gist of the call was to implant the notion that I needed my identification, including my drivers license, in Spanish in order to vote. Obviously no person in Arizona has a drivers license in Spanish and thus the receiver of such a telephone call might conclude that he would not be able to vote.

6. Interestingly enough, I had received a telephone call from Ted Downing no more than 5 minutes before I received my call describing the same call he had received. He had alerted me to its contents so I was tuned into the purpose and which enhanced my concentration of the calls message. In fact, the reason I picked up the call was because I recognized the number as the same as Ted Downing had received.

7. The calling number was 484-891-5646.

8. My home address is 1421 N. Painted Hills Rd., Tucson, AZ 85745. It is in precinct 16, Arizona Legislative District 3 and representative Raul Grijalva's district. It is a heavily Democratic Party registration area on the west side of Tucson with a large Mexican-American population. Rep. Grijalva's race was not competitive. The legislative races were not competitive and may not have been contested. The only competitive race was the U.S. Senate race where Richard Carmona was a candidate

9. I presume the voters suppression effort was directed toward reducing voters for Carmona among Spanish language voters, the large percentage of whom favored his candidacy.

10. My "assumption" is comfortably based on my 50 years experience in local politics.

11. I am profoundly opposed to any and all "tricks" or robo-calls designed to limit any persons right to vote.

I declare under penalty of perjury that the foregoing is true and correct. Executed 7th of December, 2012.

William Risner

William Risner, Esq.

ATTACHMENT C

Nexis®

No Documents Found

No documents were found for the search terms entered.

You can edit your search and try again, or save it. To edit it, you may want to try one or more of the following:

- Check for spelling errors.
- Remove some search terms.
- Check the "find similar-sounding last names" checkbox.

Search: Locate a Person (Nationwide)

Terms: state(**ALL**) radius(**30**) phone(**484-891-5646**)

Numbered Entered: Other Non-POTS
Switch is located in ALLENTOWN, PA
Number is dialable

Edit Search | New Search

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ATTACHMENT D

STATE OF ARIZONA)

) ss **AFFIDAVIT**

County of YUMA)

Ricardo Sandoval hereby declares the following under penalty of perjury:

1. I am a retired federal law enforcement officer with substantial law enforcement experience.

2. I was a candidate for Sheriff in Yuma County, Arizona, during the 2012 Democratic primary election and I was the nominated Democratic candidate in the general election.

3. I am of Mexican-American (Latino/Hispanic) descent and was the only such candidate for Sheriff in the election.

4. There is a substantial population of Spanish speaking U.S. Citizens in Yuma County, and a substantial number of Hispanic voters, and such voters tend to register and vote as Democrats in my experience.

5. During the election, a variety of election irregularities occurred, including what appeared to be obvious improper election practices and hijinks aimed at disenfranchising Democratic Hispanic or minority voters and giving the non-Latino Republican candidate the edge in the election.

6. For example, my wife has always been a registered Democrat. But when the Yuma County election officials mailed my wife her mail-in ballot during the primary election, the County Officials issued her a Republican primary ballot even though she had not been registered as a Republican. My wife had to argue with county officials to be issued a new ballot.

7. It is unknown how many Democratic voters received incorrect Party ballots during the primary election, but such a practice would suppress and particularly affect Spanish speaking Democratic voters, especially elderly voters. This is especially true for such voters who may not have necessarily understood that there were other candidates running, and that a Latino Democratic candidate was running, so when the general election came around, such voters were less likely to vote at all, or more likely to vote for the name that they had already seen and possibly even voted for during the Primary, if they voted on an incorrect Republican ballot that was issued to them.

8. In addition, there were numerous reports from volunteers and family members that at least five voting sites predominantly serving Latino/minority voters that there were numerous failures in terms of running out of ballots, and other issues, leaving voters to wait for up to 4 to 6 hours in line, to midnight. I understand that hundreds and hundreds of voters at these sites eventually left and did not vote.

9. Aside from the issues noted above, it was made known to me that my opponent, a non-Latino candidate for Sheriff, did not properly obtain the correct number of signatures to be on the Republican primary ballot because he had filed incorrect paperwork, and later simply amended a document when he should have had to start from scratch in getting signatures. This was not made known to me until after the time periods for candidates to file legal challenges, even though county officials had already been notified about the problem before then. When I reported this legal violation to County officials, Yuma County officials did not take action but instead indicated that the opponent had simply made a mistake. The County's conduct denied me the ability to timely challenge the improper conduct or challenge his place on the ballot.

10. I also complained to the County Attorney's office and Office of Special Counsel of the U.S. Department of Justice that my opponent was violating the federal Hatch act and the Arizona version of the "Hatch" Act because my opponent was a county employee as the Under-Sheriff of Yuma County, and part of his salary was paid by federal funds. Although he was violating the law during the entire election cycle from January 2012 through the end of September 2012, such as reports of having uniformed, armed officers ask Latino citizens to sign his petition, he was allowed to offer to resign about one month before the election without repercussion. County Officials refused to take action under Arizona law, and federal officials closed their investigation when he resigned.

11. I reported these and other problems to local law enforcement including the Elections officials and the County Attorney. Instead of investigating and pursuing potential legal violations or civil rights violations, County Officials instead merely invited me and my attorney to join a committee to examine and better future election practices.

12. I have documents and evidence of the issues noted above. There are many other incidents and instances that were reported which appeared to be improper and unconstitutional efforts to harass and deter Latino voters and volunteers.

13. I believe that these practices and incidents noted above, experienced by myself, family members, and friends are evidence of improper and unconstitutional practices that improperly impacted the rights of Democratic Latino voters in Yuma County, and specifically negatively impacted me and my election in my race between myself, a Latino Democratic candidate for Sheriff, and the non-Latino Republican candidate.

14. I declare the following is true and correct under penalty of perjury:

6-11-2013

DATE

RICARDO SANDOVAL

ATTACHMENT E

STATE OF ARIZONA)
) ss **AFFIDAVIT**
County of YUMA)

Beatriz Sandoval declares the following under penalty of perjury:

1. I reside in Yuma County, Arizona.
2. I am married to Ricardo Sandoval, who was a candidate for Sheriff in Yuma County, Arizona, during the 2012 Democratic primary and was the nominiated Democratic candidate in the general election.
3. I am of Mexican-American (Latino/Hispanic) descent. My husband Ricardo Sandoval was the only such candidate for Sheriff in the election.
4. There is a substantial population of Spanish speaking U.S. Citizens in Yuma County, and a substantial number of Hispanic voters. Such voters tend to register and vote as Democrats in my experience, and such voters are often unfamiliar with the process.
5. During the election cycle, I personally experienced what appeared to be an election practice aimed at disenfranchising Democratic Hispanic or minority voters and givng Republican candidates, including my husband's opponent, the edge in the election.
6. I have always been a registered Democrat. When Yuma County election officials mailed me my mail-in ballot for the primary election, Yuma County Officials sent me a Republican primary ballot even though I am not a registered Republican. I had to argue with county officials for approximately 15 minutes to be issued a new, correct Democratic ballot.
7. Several family members reported a similar impropriety, including my husband's aunt, Aide Sandoval.
8. I do not know how many Democratic voters received incorrect Republican Party ballots during the primary election, but it is my belief that such a practice would particularly

affect and impact Spanish speaking voters who may not have necessarily understood that there were other candidates running, and that a Latino Democratic candidate was running. So when the general election came around, such voters were far more likely to vote for the Republican name that they had already seen and possibly even voted for during the Primary on the separate Republican ballot that they were mailed.

9. In addition, I believe the practice unconstitutionally suppressed Latino Democratic voter turnout because such voters were unlikely to vote in the Primary or General Election after receiving the wrong ballot for the wrong Party.

10. In addition, there were reports from family members that at 5 voting sites predominantly serving Latino/minority voters, the locations ran out of paper ballots, leaving voters waiting for hours in line, up to midnight. I believe that hundreds and hundreds of likely Democratic voters at these sites eventually left and did not vote.

11. I believe these incidents and what happened to me is evidence of practices that improperly and unconstitutionally impacted and suppressed the rights of Democratic Latino voters in Yuma County, and specifically negatively impacted my husband's race as a Latino Democratic candidate for Sheriff, and also gave the advantage to the non-Latino, Republican candidate for Sheriff.

12. I declare the following is true and correct under penalty of pejury:

6-11-13
DATE

BEATRIZ SANDOVAL

ATTACHMENT F

STATE OF ARIZONA)
) ss **AFFIDAVIT**
County of YUMA)

Aide S. Sandoval, declares the following under penalty of perjury:

1. I am the aunt of Ricardo Sandoval, who ran as a candidate for Sheriff in Yuma County, Arizona, during the 2012 Democratic primary election and was the nominiated Democratic candidate in the general election.
2. I am of Mexican-American (Latino/Hispanic) descent. My nephew Ricardo Sandoval was the only such Latino candidate for Sheriff in the election.
3. During the election cycle, I personally experienced an election practice apparently aimed at disenfranchising Democratic Hispanic or minority voters, and also givng Republican candidates, including my nephew's opponent, the edge in the election.
4. I have always been a registered Democrat. When Yuma County election officials mailed me my mail-in early ballot for the primary election, they sent me a Republican primary ballot, even though I am not a registered Republican. My son and daughter assisted me in contacting county officials to obtain a new ballot. This was difficult and required me to travel 20 miles to go to the county offices to get a correct ballot.
5. I believe what happened to me is evidence of practices that unconstitutionally and improperly negatively impacted the rights of Democratic Latino voters in Yuma County by suppressing Latino voter turnout, and specifically negatively impacted my nephew's race as a Latino Democratic candidate for Sheriff, and gave the advantage to the non-Latino, Republican candidate for Sheriff.
6. I declare the following is true and correct under penalty of perjury:

6-11-2013 aide Sandoval
DATE AIDE S. SANDOVAL

ATTACHMENT G

UNITED STATES OF AMERICA

Congressional Record

PROCEEDINGS AND DEBATES OF THE 99th CONGRESS

SECOND SESSION

VOLUME 132—PART 16

SEPTEMBER 8, 1986 TO SEPTEMBER 16, 1986

(PAGES 22235 TO 23600)

UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON, 1986

GATT dispute process; and assurances of unimpeded flows of investment.

The global trading system is a delicate arrangement, and it operates largely on the basis of mutual and voluntary cooperation. Abrupt and nationalistic actions on the part of a single country have the potential to produce chain reactions which can threaten not only the harmony of international trade relations but the underlying structure of the world economy.

In short, walking away from the trade talks would not, and should not, be taken lightly.

But I believe it fair to say that the administration would have much congressional support were it to make a carefully considered decision that the potential outcome of trade negotiations was not worth the effort and compromise that our participation may involve.

This would not be a happy event; indeed, it would be a source of great international discomfort. But a new round is not an object intrinsically to be desired; a new round must be a good round.

And so we applaud the administration for its courage in confronting the serious choices that are posed as we consider new negotiations; we urge the administration to weigh such choices carefully and solemnly, recognizing their full implications; and we join the administration in urging our trading partners to appreciate the gravity of these talks and the determination of the United States to pursue true and meaningful reform.

□ 1150

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

The Senator from South Carolina is recognized.

EXECUTIVE SESSION

Mr. THURMOND. Mr. President, I ask unanimous consent that the Senate now go into executive session in order to consider Executive Calendar No. 995, William H. Rehnquist, of Virginia, to be Chief Justice of the United States.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1200

Mr. THURMOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DENTON). Without objection, it is so ordered.

Is there objection to the Senator's request to go into executive session?

Mr. BYRD. Mr. President, I know of no objection. I want to be sure the colleagues understand what is going on. I do not think there will be objection.

The PRESIDING OFFICER. Is there objection to the request to go into executive session to consider the Rehnquist nomination?

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER. The nomination will be stated.

NOMINATION OF WILLIAM H. REHNQUIST TO BE CHIEF JUSTICE OF THE UNITED STATES

The assistant legislative clerk read the nomination of William H. Rehnquist, of Virginia, to be Chief Justice of the United States.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise today to voice my strong support of Justice William H. Rehnquist, President Reagan's nominee to be Chief Justice of the United States.

Justice Rehnquist was born in Milwaukee, WI, and attended elementary and high schools in Shorewood, WI. He attended Kenyon College in Gambier, OH, for a short time and then enlisted in the U.S. Army in 1943. Following military service he attended Stanford University and was elected to the National Scholastic Honor Society, Phi Beta Kappa. He attended Harvard University receiving a master of arts degree in history. Justice Rehnquist then entered Stanford University Law School. He graduated first in his class and was a member of the board of editors of the Stanford Law Review. He was also elected to the order of the COIF, a national honor society. Following his graduation from law school, Justice Rehnquist served as a law clerk to U.S. Supreme Court Justice Robert H. Jackson from February 1952 until June 1953.

From 1953 to 1969 he was in the private practice of law in Phoenix, AZ. He practiced with the firm of Evans, Hull, Kitchel & Jenckes until 1955. He then became a partner in the firm of Ragan & Rehnquist. In 1957 he was a partner in the firm of Cunningham, Carson & Messenger, until joining the firm of Powers & Rehnquist as a partner in 1960. He practiced law in Phoenix until he became the Assistant Attorney General, Office of Legal Counsel, Department of Justice, in 1969. During his years of legal practice Justice Rehnquist served at various times as the president and member of the board of directors of the Maricopa County Bar Association. He was also chairman of the Arizona State Bar continuing legal education committee and a member of the National Conference of Commissioners of Uniform State Laws. He also served on the council of the administrative law section of the American Bar Association.

In 1971 he was nominated to be an Associate Justice of the U.S. Supreme Court and was confirmed by the full Senate in December of that year. Justice Rehnquist has served with distinction as an Associate Justice since that time.

The Judiciary Committee received the President's nomination of Justice William H. Rehnquist for the position of Chief Justice of the United States on June 20, 1986. In accordance with a committee agreement, the hearings on Justice Rehnquist's nomination commenced on July 29, 1986. Also by agreement the committee vote on the nomination took place on August 14, 1986.

The Judiciary Committee carefully and thoroughly scrutinized the nominee's qualifications, credentials and 15 years' experience as an Associate Justice of the U.S. Supreme Court. The hearings on Justice Rehnquist's nomination were held on July 29, 30, 31 and August 1, 1986. The 4 days of hearings lasted approximately 40 hours and during that time, the committee heard from more than 40 witnesses. The Rehnquist nomination is distinctive when comparing the interval between Senate receipt of the nomination and the start of the committee hearings. Thirty-nine days elapsed before the Rehnquist hearing started, which was more than with any other Supreme Court nominee during the period from 1961 until 1986.

THE ABA AND OTHER SUPPORT

The American Bar Association's standing committee on Federal judiciary, found Justice Rehnquist to be well qualified and informed the Judiciary Committee:

> The ABA committee unanimously has found that Justice Rehnquist meets the highest standards of professional competence, judicial temperament and integrity, is among the best available for appointment as Chief Justice of the United States, and is entitled to the committee's highest evaluation of the nominees to the Supreme Court—well qualified.

The extensive investigation by the American Bar Association committee provides a significant basis supporting the association's unanimous findings and its granting of the highest evaluation possible to the nominee. In their investigation, the ABA committee interviewed all of the current Associate Justices of the Supreme Court, and more than 180 Federal and State judges. As reported by the ABA, Justice Rehnquist enjoys the respect and esteem of his colleagues on the Supreme Court.

it by giving the benefit of the doubt to this wonderful man.

We have people accuse him of shoving people in voting lines. There is no one who knows Bill Rehnquist, not anyone, who would ever believe that. He is one of the most quiet, unassuming, unobtrusive people you will ever meet. He has been that way, as far as I can ascertain, all of his life.

We have people arguing about ethics. Again, assuming all the worst and never giving the benefit of the doubt, I wonder if ideology has not played a tremendous role in all of this.

If Justice Rehnquist wrote a memorandum where he pointed out the difficulties of the equal rights amendment, he is joined by literally hundreds of intellectuals who have drafted similar memorandums. It has been one of the most hotly debated issues for the last 14 years.

The fact that we differ sometimes on legal matters is really kind of insignificant and inconsequential. We are going to have a difference. We differ in the Senate. We differ among ourselves. And to impugn a person because he differs with you ideologically is really stooping too low.

It is fair to point out you are different, fair to point out that you believe one way rather than the other, fair to point out that you wish he had a different opinion, but it is really something to make that the sole determining factor as to whether or not you vote for or against a U.S. Supreme Court Chief Justice.

Madam President, I am grateful to have this opportunity to participate in this debate. I look forward to it. It should be a stimulating one.

Thank you.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

□ 1320

Mr. KENNEDY. Madam President, this vote is one of the most important that any of us will ever cast. The Chief Justice of the United States is more than just first among equals on the Supreme Court. He symbolizes the rule of law in our society. He speaks for the aspirations and beliefs of America as a nation.

The Senate is not a rubber stamp for the nomination of any Federal judge, let alone the most important judge of all, the Chief Justice of the Nation. The framers of the Constitution envisioned a major role for the Senate in the selection of judges. The Virginia plan, the original blueprint for the Constitution, gave the legislature sole authority for appointment of members of the judiciary. James Madison favored the selection of judges by the Senate. The provision ultimately adopted in the Constitution was a compromise described as giving the Senate the power "to appoint judges nominated to them by the President."

The Senate, therefore, has its own constitutional responsibility to scrutinize judicial nominees with special care, and the highest scrutiny should be reserved for the person nominated to be Chief Justice of the United States.

It is no accident that the Constitution speaks, not of the "Chief Justice of the Supreme Court," but of the "Chief Justice of the United States." In this sense, the Chief Justice is the ultimate trustee of American liberty; when Congresses and Presidents go wrong under the Constitution, it is the responsibility of the Supreme Court to set them right. Among members of the Court, the Chief Justice is chiefly responsible for ensuring that the Court faithfully meets this fundamental responsibility.

Presidents and Congresses come and go, but Chief Justices are for life. In the 200 years of our history, there have been only 15 Chief Justices. The best of them, the greatest of them, have been those who applied the fundamental values of the Constitution fairly and generously to the changing spirit of their times.

With his famous dictum, "We must never forget that it is a constitution we are expounding," John Marshall shaped the Court in the early years and laid the groundwork for America to become a nation. Roger Taney failed the test and helped put the country on the path to Civil War. Charles Evans Hughes helped guide the country safely through its severest domestic test of modern times—the upheaval of the Great Depression. In recent times, Earl Warren understood the central role of the Bill of Rights and its protections for the individual and helped guarantee that the civil rights revolution would pursue a peaceful path.

Two hundred years of history have assigned the Chief Justice a place in the affairs of our Nation not given to any other judge or justice. His commitment to equal justice under law is particularly important because the Court is the last refuge for racial minorities, those with unpopular views, and others outside the corridors of power who cannot look to the majority in society for protection of their rights.

Justice Rehnquist is not qualified to discharge this preeminent responsibility. His statements and actions throughout his career shed significant doubt on his commitment to equal justice under law, his adherence to ethical standards, and his credibility. His record on the Supreme Court places him outside the mainstream of American jurisprudence.

Near the end of the committee's examination of Mr. Rehnquist in 1971, we received allegations that Mr. Rehnquist had challenged minority voters in Phoenix in the early 1960's. We were unable to investigate those allegations completely in 1971. After the committee had reported Mr. Rehnquist's nomination in 1971, the infamous school segregation memo surfaced. Mr. Rehnquist denied in writing that the memo supporting school segregation stated his views, but was never cross examined on this issue.

We have now had the opportunity to look more thoroughly into these and other matters. Based on the current record, the Senate would probably reject Mr. Rehnquist if he were before us now as a first-time nominee to the Supreme Court. And he certainly does not deserve to be rewarded for concealing those transgressions in the past by elevating him now to be Chief Justice. I have heard the argument that refusing to approve this nomination will reflect adversely on Justice Rehnquist and therefore on the Court. Mr. Rehnquist should have been rejected in 1971. We should not compound that error by promoting him in 1986.

The choice is not whether to make Justice Rehnquist the Chief Justice or impeach him. If rejected by the Senate, Justice Rehnquist will presumably remain on the Court. We are saying simply that he lacks the special qualities we expect of our Nation's chief judicial officer. The Senate did not hesitate to make a similar judgment against Associate Justice Abe Fortas when he was nominated for Chief Justice in 1968, and we should not hesitate to apply the same test to Justice Rehnquist.

There are four basic reasons why I oppose this nomination of Mr. Rehnquist:

Consistent and appalling record of opposition to minorities; his extreme positions against the constitutional minorities; his extreme positions against the constitutional rights of individuals; his refusal to recuse himself in the case of Laird versus Tatum; and his lack of candor in testifying to the Senate Judiciary Committee.

INSENSITIVITY TO MINORITIES

Justice Rehnquist's entire legal career shows a persistent hostility to the rights of minority citizens. In his first job after law school, when Mr. Rehnquist was a law clerk to Justice Jackson, he authored his infamous memo on the school desegregation cases, in which he stated:

I realize that it is an unpopular and unhumanitarian position, for which I have been excoriated by my "liberal" colleagues but I think *Plessy v. Ferguson* was right and should be affirmed.

In 1971, Mr. Rehnquist stated that the views in the memo were Justice Jackson's, not his own. In the hearings in July, Justice Rehnquist reaffirmed this position. Frankly, his statements

are not credible. He has been contradicted by several people, including impartial commentators. His fellow law clerk at the time, Donald Cronson, disputes Rehnquist's explanation and says the memo was more Cronson's than Rehnquist's. Elsie Douglas, who was Justice Jackson's secretary for 9 years, said that Mr. Rehnquist's account was "incredible on its face." Richard Kluger, who wrote the definitive work on the Brown decision concluded that a preponderance of the evidence indicated that the memo was an accurate statement of Mr. Rehnquist's own views on segregation, not Justice Jackson's. We have looked at all of the memos Mr. Rehnquist prepared for Justice Jackson; several of them contain Mr. Rehnquist's personal views, and are written in a style similar to the segregation case memo.

Justice Jackson died in October 1954, a few months after he had voted for desegregation and against the position in the Rehnquist memo, so we don't know what he would say about it. But the record itself casts serious doubt on Justice Rehnquist's explanation.

Mr. Rehnquist's hostility to minorities increased when he entered private practice in Phoenix. In the 1960's he publicly opposed a Phoenix public accommodations ordinance, and he publicly challenged a plan to end school segregation in Phoenix, stating that "we are no more dedicated to an integrated society than a segregated society."

At his confirmation hearings in 1971, he stated that he has come to realize "the strong concern that minorities have for the recognition of these rights." Mr. Rehnquist did not, however, say that he had come to share this concern. In response to my question at the hearings, Justice Rehnquist could not recall a single civil rights statute which he had supported on the public record.

In the early 1960's, he led a Republican Party ballot security program designed to disenfranchise minority voters. Accounts of voter harassment by participants in the program in Phoenix in 1962 are documented by reports in the Arizona Republic of November 7, 1962, that voter-challenging by Republicans in predominately black and Hispanic precincts in South Phoenix obstructed the right to vote of citizens assigned to those precincts.

Similar difficulties characterized election day in Phoenix in 1964. On November 4, 1964, the Arizona Republic reported that:

Substantial harassment of Democratic voters in several Phoenix precincts was reported to State Democratic Party leaders.

Robert H. Allen, State Democratic chairman, said reports reaching his office indicated that the harassment consisted mainly of "indiscriminate mass challenging of voter residency." "Most of the harassment came from precincts with predominantly Negro and Mexican American voter registration," said Allen.

In 1960, Rehnquist was designated cochairman of the ballot security program; he supervised and assisted in the preparation of envelopes mailed to Democrats—largely in black and Mexican-American districts—which were the foundation of residency challenges; he recruited lawyers to serve on a lawyer's committee; he advised challengers on the law; and he supervised in assembling returns of the mailings for challenging purposes.

In 1962, Rehnquist was designated chairman of the lawyer's committee of the county Republican Party, and he again taught challengers the procedures they were to use. And, as in 1960, he served as a troubleshooter—going to precincts at which disputes had arisen in order to help resolve them.

Finally, in 1964 Rehnquist became chairman of the ballot security program, with overall responsibility for mailing out envelopes, recruiting challengers and members of the lawyer's committee, and speaking, or seeing that someone spoke, at a training session of challengers.

Thus while Mr. Rehnquist has sought to disassociate himself from the tactics in 1962 and other years, he held a high and responsible position in the election day apparatus from at least 1960 to 1964, a period that saw very substantial harassment and intimidation of voters in minority group precincts.

□ 1330

The committee has received sworn testimony from numerous credible witnesses that, as part of his involvement in the ballot security program, Mr. Rehnquist personally challenged the eligibility of minority voters. Mr. Rehnquist categorically denied this. In response to repeated questioning during the recent hearings, Justice Rehnquist continued to deny that he had ever challenged voters during the 1958-68 period or intimidated voters at any time. Nevertheless, five witnesses testified that Justice Rehnquist was engaged in challenging or intimidating voters. None of these witnesses had anything to gain by misrepresenting the truth, and, in fact, may feel they are risking adverse consequences.

For example, Mr. James Brosnahan, an assistant U.S. attorney in Arizona in 1962, testified that he visited a minority polling place in South Phoenix on election day 1962, that he saw Rehnquist at the precinct and that others in the polling place pointed out Rehnquist as having engaged in challenging voters. He discussed the matter with Rehnquist, who did not deny the charge. His answers to Mr. Brosnahan's questions acknowledged that he had been engaged in challenging voters.

Dr. Sidney Smith testified that he was in a predominantly minority Phoenix polling place in 1960 or 1962. He saw Mr. Rehnquist drive up with one or two men and get out of the car. Mr. Rehnquist approached two black men in the line of voters and held up a white card for them to read. He said:

You have no business being in this line trying to vote. I would ask you to leave.

Mr. Charles Pine testified that he was working out of Democratic county headquarters and received a complaint about someone intimidating voters at the Bethune polling place in 1962. When he arrived, an attorney identified the man engaged in challenging voters as Rehnquist. Mr. Pine saw the man identified as Rehnquist approaching voters, and asking, "Pardon me, are you a qualified voter?"

These witnesses provide overwhelming evidence that Rehnquist was personally engaged in challenging and harassing voters during the early 1960's.

Minority citizens look to our Federal courts for equal justice. They have reason to be concerned that their rights will not be protected in a court led by Justice Rehnquist.

As a member of the Supreme Court, Justice Rehnquist has been quick to seize on the slightest pretext to justify the denial of claims for racial justice:

His lone dissent in the Bob Jones University case supported tax credits for segregated schools.

In Batson versus Kentucky, his dissent supported the right of a prosecutor to prevent blacks and minorities from serving on a jury.

In Keyes versus School District No. 1, Denver, Colorado, his dissent supported the view that segregation in one part of a school district does not justify a presumption of segregation throughout the district.

In 33 cases during his 15 years on the Court, Rehnquist has voted in favor of a black complainant in a race discrimination case; 31 were unanimous decisions.

In 14 race discrimination cases brought by or on behalf of blacks, Justice Rehnquist cast the deciding vote against the civil rights claimant every time.

RECORD OF EXTREMISM ON THE COURT

In his 15 years on the Supreme Court, Justice Rehnquist has compiled a record of consistent opposition to individual rights in all areas—minority rights, women's rights, religious liberty, rights of the poor, rights of aliens, and rights of children.

In 1974, Harvard Law Professor David Shapiro reviewed Justice Rehnquist's first four terms on the Court and reached the following conclusion:

A review of all the cases in which Justice Rehnquist has taken part indicates that his votes are guided by three basic propositions:

(1) Conflicts between an individual and the Government should, whenever possible, be resolved against the individual.

(2) Conflicts between State and Federal authority, whether on an executive, legislative or judicial level, should, whenever possible, be resolved in favor of the States; and

(3) Questions of the exercise of Federal jurisdiction, whether on the district court, appellate court or Supreme Court level, should, whenever possible, be resolved against such exercise.

Justice Rehnquist's hostile record on individual rights is shocking. During Justice Rehnquist's tenure, the Court has decided 23 cases involving constitutional claims of sex discrimination. The majority of the Court voted with the claimant 14 times. Justice Rehnquist voted to uphold the challenged statute or practice in 20 of the 23 cases effectively against individuals.

In cases involving claims of discrimination against legal aliens, Justice Rehnquist has voted to uphold the discriminatory statute in everyone of the 12 cases in which he participated. The majority of justices found the challenged statute unconstitutional in eight of those cases. Justice Rehnquist would bar legal aliens from holding jobs ranging from architect to notary public.

In cases striking down statutes which provide that illegitimate children do not have the same rights as legitimate children, Justice Rehnquist has consistently voted to uphold the discriminatory statutes. Justice Rehnquist would deny disability insurance payments and worker's compensation benefits to illegitimate children.

Since Justice Rehnqulst has been on the Court, it has decided 25 cases involving separation of church and State. In 13 of those cases, a majority of Justices held the challenged statute to be a violation of the first amendment prohibition on Government sponsorship of religion. Justice Rehnquist voted to uphold the statute completely in 23 of the 25 cases, and voted to uphold part of the statute in the remaining two cases.

Of 30 cases involving claims of cruel and unusual punishment, the Court found a constitutional violation in 15. Justice Rehnquist found a constitutional violation in none of those cases.

Justice Rehnquist's pattern of denying individual rights in pervasive and flies in the face of the Court's critical role as protector of such rights. Perhaps the most telling illustration of Justice Rehnquist's unwavering commitment to uphold Government action against challenge by an individual is his record in cases where he cast the deciding vote in a matter involving the constitutionality of Government action. In 120 of 124 cases, Justice Rehnquist cast the deciding vote to reject the constitutional claim.

Imagine what America would be like if Justice Rehnquist had been Chief Justice and his cramped and narrow view of the Constitution had prevailed in the critical years since World War II.

The schools of America would still be segregated. Millions of citizens would be denied the right to vote under scandalous malapportionment laws. Women would be condemned to second-class status as second-class Americans. Courthouses would be closed to individual challenges against police brutality and executive abuse—closed even to the press. Government would embrace religion, and the wall of separation between church and State would be in ruins. State and local majorities would tell us what we can read, how to lead our private lives, whether to bear children, how to bring them up, what kinds of people we may become. Such a result would be a radical and unacceptable retreat from the protections Americans enjoy today, and our Constitution would be a lesser document in a lesser land.

TATUM VERSUS LAIRD

The Chief Justice of the United States must have the highest ethical standards. Shortly after he joined the Court, Justice Rehnquist refused to recuse himself in the important case of Tatum versus Laird, and thereby demonstrated an ethical lapse that, in my view, should by itself disqualify Justice Rehnquist from being Chief Justice.

The plaintiffs in Tatum challenged the Government's policy of surveillance of civilians by the Army. Justice Rehnquist cast the deciding vote to reject the challenge, and denied the plaintiff's request that he recuse himself. The applicable ABA Code of Judicial conduct required disqualification if a judge's impartiality might reasonably be questioned because of the judge's involvement in the matter prior to his coming to the bench.

The public record indicates that Assistant Attorney General Rehnquist was heavily involved in the development of the policy of surveillance of civilians by the Army, the same policy which was challenged by the plaintiffs in Tatum. Further, Assistant Attorney General Rehnquist had some knowledge of disputed evidentiary facts in the Tatum case, and had, while the case was pending in the Federal Court of Appeals, expressed the opinion that the plaintiffs in Tatum versus Laird had a nonjusticiable claim.

I might point out for the RECORD, Mr. President, that I find the statement by the committee members in referencing the Laird versus Tatum issue in question to be in complete in significant respects. In the committee report, the memorandum in which Justice Rehnquist indicated his reasons for not recusing himself is reprinted verbating followed by excerpts from Mr. Rehnquist responses to questions by Senator Ervin when he appeared before the Ervin Committee.

But the most significant comment that Mr. Rehnquist made is not included in the majority views in the committee report. It is included in my comments on page 79 of the committee report. In this key statement, Mr. Rehnquist indicated "My only point of disagreement with you is to say whether in the case of Laird versus Tatum that has been pending in the court appeals here in the District of Columbia that an action would lie by private citizens to enjoin the gathering of information by the executive branch where there has been no threat of compulsory process and no pending action against any of those individuals on the part of the Government."

□ 1340

That is a direct statement about how he would rule if he were deciding the Laird versus Tatum case. But through oversight or whatever, that particular reference was not included in the committee's report to this body. That is one of the most significant points in the Laird case, that Mr. Rehnquist stated his conclusion about the parties rights in that particular case and then ruled on it when he got to the Supreme Court.

Finally, the record of Assistant Attorney General Rehnquist's actual role in the formulation of the policy involved in Tatum is in conflict with his sworn testimony on the subject. In his testimony last month, Justice Rehnquist stated that the only information he had about Army surveillance of civilians was obtained in connection with May Day. May Day was in 1971. In fact, Mr. Rehnquist was involved in the development of the policy of Army surveillance of civilians from the beginning—in 1969.

That was all brought out in the various documents provided by the Justice Department, many of which he authored. In the civil disturbance plan memorandum, Mr. Rehnquist provides a very detailed justification for the use of the Army to spy on American citizens, and the use of the FBI for intelligence gathering on American individuals.

In considering the Tatum versus Laird case, we should not forget the issue in that litigation and the consequences of Justice Rehnquist's vote. If Justice Rehnquist had recused himself, as he should have, the decision of the court of appeals would have been affirmed, and the case would have been sent back to the trial court. Discovery would have gone forward, and in the course of that discovery, the American people would have learned about the Huston plan, about the Army's surveillance of private citizens, and about the CIA's illegal domestic surveillance operations. But because of Justice Rehnquist's vote, that infor-

mation remained concealed from the American people for several years. His vote prevented the American people from learning about the illegal intelligence activities going on inside the Nixon administration. As an Assistant Attorney General in the Justice Department, Mr. Rehnquist was well aware of these activities and he did not want the American people to know about them.

That is why Prof. Geoffrey Hazard, one of our Nation's foremost judicial ethics experts, who played a key role in formulating the "ABA Canons On Judicial Ethics" has been so critical of Justice Rehnquist's decision to sit on that particular case. We will examine Professor Hazard's opinion in greater detail during the course of this debate.

CREDIBILITY

Throughout all of these issues which raise serious concerns about Justice Rehnquist's fairness and openmindedness and commitment to equal justice runs a thread of evasivenss that casts doubt on his credibility. From the Jackson memo to the voter harassment to the Tatum case, we see a pattern of explanations by Justice Rehnquist that are contradicted by others or are misleading or do not ring true. It is not a pattern worthy of the Chief Justice of the United States.

CONCLUSION

In the past, the Senate has not hesitated to oppose controversial Presidential nominations to the office of Chief Justice. Before Rehnquist, 20 persons have been nominated to that high office, but only 15 have been confirmed. Most recently, in 1968, with the active encouragement of the current chairman of this committee, the Senate refused to invoke cloture on President Lyndon Johnson's nomination of Associate Justice Abe Fortas to be Chief Justice, and the nomination was withdrawn.

The Senate should not hesitate to do the same today. This institution is not a rubberstamp. We have our own independent responsibility to the Constitution, the Supreme Court and the judicial appointment process.

On the merits, Justice Rehnquist is not mainstream but too extreme—he is too extreme on race, too extreme on women's rights, too extreme on freedom of speech, too extreme on separation of church and state, too extreme to be Chief Justice.

Further, Justice Rehnquist did not hesitate to defy the fundamental principles of judicial ethics by participating—and casting the decisive vote—as an Associate Justice in a major Supreme Court case that challenged his own extremist actions as an Assistant Attorney General in fashioning the Nixon policy of military surveillance of civilians. And he engaged in an unusually cruel and unseemly violation of legal ethics by concealing a trust he had drafted for the benefit of the destitute and deperately ill brother of his wife.

Finally, Justice Rehnquist did not come clean with the committee in any area of major controversy; the committee record, including the testimony of numerous witnesses, is replete with serious challenges against his credibility.

In sum, Justice Rehnquist is outside the mainstream of American constitutional law and American values, and he does not deserve to be confirmed as Chief Justice of the United States.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Madam President, I rise to oppose this nomination.

I want to put one point at rest very promptly. That is the point that was made by the majority leader this morning before we got into the Rehnquist nomination. The majority leader this morning said that this is just a question of giving the President the right to name those jurists that he believes should be on the Court, and that it was a question of liberalism versus conservatism.

Let me point out that this statement is just so contradictory to the facts that, before I get into some of the remarks I hope to make in connection with this nomination, I think we ought to look at the reality of the situation on that subject.

I will address myself later to the number of judges that we have confirmed without any question being raised concerning political philosophy. But let us take two outstanding cases.

In connection with the confirmation of Justice Sandra Day O'Connor, who is recognized, respected, and accepted as a conservative jurist, this body voted 99 to 0 for her confirmation. It is a fact that I think very few of us doubt that the vote with respect to the confirmation of Justice Scalia will probably be something in that very area. His nomination came out of the committee unanimously.

So, to suggest that the opposition to Justice Rehnquist is somehow related to his political philosophy or his conservatism just does not accord with reality. Anyone who suggests that that is the case just is not willing to look at the facts.

Madam President, I have been in this body off and on since 1974, and it is my view that there will never be a more important vote that I have cast or will cast than the one having to do with the confirmation of the Chief Justice of the United States.

Although I recognize the value of television in the Senate, I am frank to say that I am somewhat disappointed, that there are not more Members of this body on the floor prepared to debate this issue. We are considering the confirmation of a nominee for Chief Justice who would serve for 10, 15, 20 years, possibly well into the 21st century. Much is at stake for the Nation.

The Chief Justice heads the third branch of our Government. He heads the judicial conference of the United States, composed of all Federal judges. He appoints committees which make policy for our Federal courts. He chairs the board of the Federal Judicial Center, which does research, training, and education for our Federal courts. He literally manages the Supreme Court.

He presides over the Court sessions and decisionmaking meetings of the Court.

When he is in the majority he assigns opinions to the Justice who is to write them.

The Chief Justice serves as a symbolic head of the Federal court system. He holds the highest judicial office in our Nation. This is more than just another judicial appointment.

He occupies the pinnacle of judicial power in our country.

Before confirming a nominee for Chief Justice we must discuss fully the issues and the controversies presented by this nomination.

□ 1350

I accept the challenge of my colleague from Utah, who said "let us be fair." If my colleagues in the U.S. Senate will look at all the evidence concerning Justice Rehnquist and be fair about it, if they will not make a decision purely on a politically partisan basis, they will come to the conclusion that Justice Rehnquist should not be confirmed as Chief Justice. I am willing to be fair. I wonder if my colleagues are willing to be equally fair.

Some say that those of us who desire this debate are wrong to have the debate at all, that we seek a partisan fight over this nomination. Nothing could be further from the truth. I am frank to say that it should be noted that on my side of the aisle, there has been a split. Some of the Democrats have voted for confirmation and some have not. The partisanship comes from across the aisle.

Not one of those who sat on the committee could see fit to vote against the confirmation. That is indeed partisanship. One might say, well, it is not partisanship; they just understand the issues better. But I would say if you understand the issues and really thoroughly look at them, you cannot arrive at the conclusion that every Member on the other side would see fit to vote for confirmation. I hope that will not happen.

The importance of this nomination demands our integrity. It demands that we look at this man's record and put aside all political considerations and decide what is right for America.

Those of us on this side of the aisle have not delayed or thwarted confirmation of President Reagan's judicial nominees. There have been very few that have been opposed in the United States. We have confirmed over 285 Federal judges and only 5 or so of that 285 have excited any real controversy. I am frank to say that overall, there has been bipartisan cooperation.

Some would say we should not oppose or debate this confirmation because it is a reflection upon the Supreme Court of the United States itself, to raise some of the questions that my colleagues have already raised and that I shall elaborate upon in some detail today. But this is not an ordinary confirmation. To fail to raise the issues concerning Justice Rehnquist and his integrity and his candor and his truthfulness would be irresponsible on our part. We are confirming the Chief Justice of the United States, a post filled only 15 times in the history of this great Nation. The Chief Justice will serve longer than most Presidents and longer than most Senators. Therefore, I say to every Member of this body, you owe it to yourselves, but more than that, you owe it to your children and to your grandchildren to decide—do you want to make just a partisan judgment or will you make a judgment based upon all of the evidence? If it is a judgment based on all the evidence, it will be a judgment that Justice Rehnquist should not be the Chief Justice of the United States.

We are considering the confirmation of a Chief Justice who will serve all the people of the United States. Each Senator must decide on his or her own whether Justice Rehnquist is the appropriate person the appropriate choice to serve all the people of this Nation.

The Chief Justice affects future directions of constitutional interpretation. The Chief Justice is the symbol of the Supreme Court. He or she is the final guarantor of individual liberties. The Chief Justice is a symbol of the highest standards of integrity and fidelity to the law.

The most important issue for me is the last one. The Chief Justice of the United States is the embodiment of the ideal of integrity. The unfortunate truth is that the hearings cast great doubt on Justice Rehnquist's credibility. There are four major areas that trouble me in regard to his credibility. The area of voter intimidation, a memo about Brown versus Board of Education, and a restrictive covenant which applies to his property in Vermont, each of which I shall discuss in detail today. His statements regarding the case of Laird versus Tatum also raise certain credibility issues, but I will defer a discussion of those.

I want to talk about the issue of voter intimidation first. Let me make it very clear that the issue is not whether he intimidated voters. That is not the issue. The issue is whether he was truthful when he testified on this issue during his first confirmation hearing in 1971. The issue is not what he did but whether he was truthful when he testified during his confirmation hearing last month.

What did he say in 1971 when he was asked whether he had challenged voters? Justice Rehnquist stated to the Judiciary Committee in 1971 in response to written questions: "In none of these years"—meaning 1958 to 1968—"did I personally engage in challenging the qualifications of any voters." I repeat—

He stated that in none of those years did he personally engage in challenging the qualifications of any voter.

In response to evidence presented at the 1971 hearings that he engaged in harassing and intimidating voters, he submitted an affidavit after the conclusion of the hearing. In that affidavit, he stated under oath: "I have not, either in the general election of 1964 or in any other election, at Bethune precinct or in any other precinct, either myself harassed or intimidated voters, or encouraged or approved the harassment or intimidation of voters by other persons."

That was succinct, it was clear. He had not in any election, either himself harassed or intimidated voters or encouraged or approved the harassment or intimidation of voters by any other person. But the record shows overwhelmingly that that statement is untrue.

We are talking not alone about his statements in 1971. Again, in 1986, he repeated the same position over and over again. Questioned again and again as to whether he challenged voters, each time, he said no. Senator THURMOND said to him: "How do you respond to these allegations?" Justice Rehnquist said: "I have reread very carefully the statement I made to the committee in 1971 and I have absolutely no reason to doubt its correctness now."

□ 1400

Senator KENNEDY said to him, "Do you deny categorically that you were engaged in any of the activities that are identified by any of these individuals in any of the polling places that were mentioned?" Justice Rehnquist: "Yes, I do deny that."

I asked him, "Did you ever ask a voter any questions regarding his or her qualifications to vote?" Justice Rehnquist said, "Not that I can recall."

I asked him, "Did you ever ask a prospective voter to read from any text, whether the Constitution or otherwise? Justice Rehnquist: "Not that I can recall."

I asked him, "Did you ever personally confront voters at Bethune precinct?" Justice Rehnquist: "No, No, I did not."

Each time he was asked, Justice Rehnquist denied the allegation.

Members of the Senate, the evidence is exactly to the contrary. There were five witnesses who appeared before the committee, five witnesses who were totally impartial, objective, they had nothing to gain, and some, I am frank to say, had a lot to lose by being there. Yet each came forward and testified to Mr. Rehnquist's involvement in challenging, intimidating, and harassing voters.

Mr. Brosnahan was the first witness, senior partner in a San Francisco law firm of 235 lawyers, a former U.S. attorney, was the assistant U.S. attorney at that time when he met Mr. Rehnquist—even today represents clients practicing before the Supreme Court. It took a lot of courage for Mr. Brosnahan to appear before us. There is no doubt in my mind that if you had a law firm of 235 members in San Francisco, the overwhelming majority of them are going to be members of the Republican Party. There is no doubt in my mind that they are going to be conservative, that they are going to be supportive of Justice Rehnquist's nomination. But Mr. Brosnahan felt he had to come forward and testify. He was very clear. He personally did not see Justice Rehnquist challenge voters. He did not say that he did. But when he was called to investigate claims of harassment, Justice Rehnquist was there, and he testified. "At that polling place, I saw William Rehnquist, who was known to me as an attorney in the city of Phoenix. He was serving as a challenger of voters; that is to say, the conduct and complaints had to do with his conduct. People told me he was challenging, and he did not deny he was a challenger. At that time in 1962, he did not raise any question about credentials or any of that. He did not deny that."

Now, he further went on to testify that he had talked to Justice Rehnquist about the complaints about his having challenged voters, and Justice Rehnquist's comments to him acknowledged he had been challenging voters. There was no mistake that many people in the room complained about the fact that Justice Rehnquist had been challenging voters and they complained to Mr. Brosnahan, who was the assistant U.S. attorney.

Now, Mr. Brosnahan did not make a mistake about identity. He knew Mr. Rehnquist. He had attended bar association functions with him. He had introduced his wife to him. Mr. Brosnahan said that Justice Rehnquist had been challenging voters. Justice Rehnquist said that he did not, and I quote,

"personally challenge the qualifications of any voter."

Then came another witness, a Dr. Smith, a professor of psychology, former professor at the Arizona State University. He testified that he saw Justice Rehnquist at the minority polling place in Phoenix in 1960. He saw Justice Rehnquist approach two black men in a line of voters, and he heard Mr. Rehnquist—and I use the term Mr. Rehnquist because obviously he was not "Justice" at that time—he heard Mr. Rehnquist say, "You have no business being in this line trying to vote. I would ask you to leave." As a result, Dr. Smith said, the two men left the line. There was no mistake in Dr. Smith's opinion about his identity. He knew who Justice Rehnquist was and could identify him. There was no mistake about what Mr. Rehnquist did. He challenged voters. He intimidated voters. He deprived minority members of their right to vote. Dr. Smith testified that Justice Rehnquist was harassing and intimidating voters. Dr. Smith quoting Justice Potter Steward testified, "I may not be able to define intimidation but I know it when I see it."

Dr. Smith was a very impressive witness. He had absolutely nothing to gain from testifying. And when asked as to why he had come forward, he said, "I am here to keep from being shamed in the eyes of my children." And I might say that his children sat behind him during his testimony.

Yet, in spite of that direct evidence, Justice Rehnquist said he did not personally challenge the qualifications of any voters.

(Mr. COHEN assumed the chair.)

Mr. METZENBAUM. Then there was a third witness, a Mr. Pine, a successful businessman in Phoenix. In the 1960's he was active in the Democratic Party.

On election day, he was assigned to respond to complaints from precincts where harassment of voters had occurred. He testified that he received complaints about harassing voters at the Bethune precinct, and when he arrived, the attorney who accompanied him said, "That is Bill Rehnquist." He saw Mr. Rehnquist approaching voters, challenging their qualifications to vote. Mr. Pine stated that as a result of Mr. Rehnquist's challenge, voters left the line. They were entitled to vote but they left the line because Mr. Rehnquist made them feel that they should have some document, some piece of paper to show they were qualified. It was not the law. It was wrong. It was unfair.

But having said all of that, let me make it clear if Justice Rehnquist had come before the committee and said, "Yes, indeed, I did that; I challenged voters. I may have even gone too far; I'm sorry, I should not have done it. It was a number of years ago and it was a mistake on my part"—that is not what he has done—I think all of us could understand some misconduct on the part of a human being some years past.

The question is his veracity. Did he come forward and admit the conduct? Did he tell the Senate what he had done and say, "I should not have done it?" No. Justice Rehnquist back in 1971 and again in 1986, time and time again said he never personally challenged the qualifications of any voters.

And then there was Senator Pena, a State senator from New Mexico. He testified he saw Mr. Rehnquist challenge voters at a minority precinct. Mr. Rehnquist was holding up the lines. A hundred people were waiting to get in line. Mr. Rehnquist was asking everybody who came in, "Where do you live? How long have you lived there? What is your name?" These were minority voters. They were afraid. It was a way to force people to give up and leave the line, and they did just that. That is wrong. It is unfair. It was not proper conduct on his part.

□ 1410

I repeat: The issue is not what he did. The issue is, Did he tell the U.S. Senate committee considering his nomination in 1971, and again in 1986, the truth? One can only come to the conclusion that the answer is "No."

Justice Rehnquist says that he never personally challenged the qualifications of voters. That just is not the fact.

Then there was another witness, a Mr. Mirkin. Mr. Mirkin is an attorney in Phoenix, and obviously he had nothing to gain. As a matter of fact, he said that he supported Justice Rehnquist's confirmation. But when it came to the question of what he saw Mr. Rehnquist doing, he testified that he saw Mr. Rehnquist intimidate voters; he tried to encourage them to leave the line at a minority polling place. This was a man who said, "I support his confirmation."

Mr. Mirkin testified that Mr. Rehnquist was giving instructions to challengers at the polling place. But Mr. Mirkin said they were merely props. He said that the real audience was the minority voters and the real object was to get them to leave the line, to get them to give up their right to vote.

How Justice Rehnquist could tell Senator THURMOND, could tell Senator KENNEDY, could tell me that he did not challenge or intimidate voters, or how he could have told the Senate committee that in 1971, in view of the evidence, is hard to comprehend.

Before the day is over, we will hear my colleague from Utah probably talk about the fact that there were five witnesses on one side and there were seven witnesses on the other side. So I think we ought to talk about those seven witnesses, because, so far as I am concerned, those witnesses were honorable people; they were respectable people. Some were lawyers. Five of them were Republicans, or active in the party. But I do not question the fact of their total honesty, Republicans or Democrats. I am not one who believes that some people in one party tell the truth and some people in another party do not. Those five were involved in the challenging program with Justice Rehnquist.

One witness was actually involved with the Democratic Party—he had been the county chairman—and another was a police officer. All of them said the same thing: "We were not with Mr. Rehnquist, so we cannot say what he did, but we don't think he would do such a thing." In fact, they talked about the law of probabilities being that he would not do such a thing.

I respect their opinions. But testimony based on the "law of probabilities," has little weight in the face of uncontroverted direct evidence from five people under oath, each of whom has nothing to gain by testifying against Justice Rehnquist's confirmation. The witnesses were asked about Justice Rehnquist's conduct in 1962.

Question: "Can you state categorically that Justice Rehnquist did not challenge anyone on that election day?"

One answered for the group: "How could you answer that categorically when not one of us was with him all day?"

I accept that answer. You cannot categorically say that somebody did not do something on a particular day if you were not with him all during the day. The truth is that none of these witnesses knows everything that happened on election day in 1962, and they do not know everything that happened in 1960 or in 1964. They were not with Justice Rehnquist all day in 1962, and they did not claim to have been with him all day in other years.

The proponents of his confirmation say that all this is just a case of mistaken identity, that all the testimony really refers to one incident involving another man. That, I say to my colleague from Utah, who has made that statement previously, is a smokescreen; that is a phony argument.

There was an incident involving another man in 1962 at Bethune Precinct. There was a scuffle, and a man was taken away. That man's name was Mr. Bentson. But none of the five witnesses referred to that incident at all. None of the five witnesses testified to a scuffle; none mentioned the police taking someone away. That was a totally separate and distinct action by Mr. Bentson. That incident occurred at a different time and place than the

incidents described by the five eyewitnesses.

The five witnesses who saw Mr. Rehnquist were not talking about Mr. Bentson. There is no claim that Justice Rehnquist was involved in that incident. So let us not confuse the facts on the question of Mr. Bentson and Mr. Rehnquist.

I think my distinguished colleague will also probably say that they both were tall men, and therefore there was this confusion. But none of the five saw any scuffle. None of the five confused Mr. Rehnquist with anyone. All of the five recogized Mr. Rehnquist for whom he is.

There is another phony argument that has been offered. The supporters of Justice Rehnquist say that the police officer who investigated the scuffle was at the Bethune Precinct all day, and that he came forward and testified that he never saw Justice Rehnquist.

There are two major problems with that argument. First, only one of the witnesses testified he was sure an incident occurred at Bethune Precinct, and in that case the incident occurred in 1964. The police officer was at Bethune in 1962, not 1964.

Another problem: The police officer told us that he was at the polling place only 1 hour, and the rest of the day he was "in the area." Those are his words, "in the area." So he did not know what was going on there.

There are a lot of people in the area of the U.S. Senate today, probably some as close as the House of Representatives and some on the streets. They are in the area but they probably do not know what is going on on the floor of the U.S. Senate this afternoon.

Supporters of Justice Rehnquist go on to say that one of the witnesses they called, a Mr. Maggiore, was in Democratic headquarters in 1962—he was the county chairman at that time—and he never received a complaint about Mr. Rehnquist. So what? Because nobody called him, does that prove it did not occur? They contend that Mr. Rehnquist could not have been involved in challenging voters because Mr. Maggiore got no call.

□ 1420

Would the assistant U.S. attorney call the Democratic chairman, or would the State senator feel it necessary that he call the State chairman? Would the doctor feel that it was incumbent upon him to call the county chairman? Of course not.

The failure of a call to the Democratic county chairman does not prove anything. It just proves that nobody saw fit to call him.

And, again, the incidents that occurred in 1960 and 1964 could not lead to a call in 1962.

None of the witnesses, I might also say, claimed that he had called Mr. Maggiore.

So what do we have? On one side, we have five witnesses who were there, five witnesses with nothing to gain and a lot to lose, and on the other side, seven witnesses all of whom admit they were not with Justice Rehnquist throughout all the election days in either 1960, 1962, or 1964.

It is not easy to come out here on the floor and state my conclusion that a sitting Supreme Court Justice has misstated the facts. But the Constitution demands that each of us make an independent judgment as to the fitness of the nominee for this office, the nomination of the Chief Justice, the highest symbol of integrity and fidelity to the law. Justice Rehnquist misled the committee in 1971 and in 1986. He challenged voters. He harassed voters. He deprived them of their right to vote. Then he told the Senate—and to me this is the critical question—he told the Senate in 1971 under oath and again in 1986 that he did not.

That, to me, is the key point, the question of telling the truth to the U.S. Senate.

I cannot support his nomination under these circumstances. Yet I want to be very candid about something. If this had been the only instance of his lack of candor, I might be persuaded to say, "Well, maybe he has misstated the facts but one issue does not make a total case and perhaps I should give him the benefit of the doubt."

But there is so much more having to do with the very question of his candor and his integrity and his forthrightness.

Let me go now to another subject. As I go to these subjects, I want to emphasize I do not believe that the issue is what he did or did not do. I believe the issue has to do with his candor and his integrity and his truthfulness in his representations to the U.S. Senate.

The memo in connection with the case of Brown versus Board of Education is the next matter about which I would like to speak.

Justice Rehnquist wrote a memo. The memo has, right under the substance of the text, his initials, WHR. He was younger then. He was a clerk for Justice Jackson. He had a right to his own views. I am not concerned about whether I agree or disagree with him about his thoughts concerning Brown versus Board of Education of Plessy versus Ferguson back there in 1952. I am concerned about whether he told the truth about the memo in 1971 at his first confirmation hearings. I am concerned about whether he told the truth to the Senate in 1986.

Let us take a look at the facts: The memo was typed by Justice Rehnquist. As I previously stated, it has his initials on it. It is written in the first person. The memo says, "I realize that it is an unpopular and unhumanitarian position for which I have been excoriated by 'liberal' colleagues, but I think Plessy versus Ferguson was right and should be reaffirmed."

But in 1971, at his confirmation hearing, Justice Rehnquist stated, "Those are not my views. They are Justice Jackson's."

He stated in his 1971 letter to the Senate: "The bald simplistic conclusion that 'Plessy versus Ferguson was right and should be affirmed' is not an accurate statement of my own views at the time."

That leads to the first question of credibility because the memo is in the first person, the memo has his initials right below that very line and it is clear that he agreed with Plessy versus Ferguson doctrine of segregated schools. But when he advised the Senate about his position, he indicated that he disagreed with Plessy and supported the view that the public schools should be integrated.

I do not care what his opinion was then. He had a right to his point of view and he has a right to his point of view as a member of the Court and whether I agree or disagree is not the issue I am concerned about here.

So at one point he said he agreed with the Plessy decision, on the other point he said he disagreed with it, and then—and then—in 1986 When Senator BIDEN asked him what his views were, he said "I do not think I reached a conclusion."

Now, you have him on one of the issues, you have him on the other side of the issue categorically, and then you have him saying "I do not think I reached a conclusion."

These statements are too totally inconsistent to reconcile. The story just will not wash. All the rest of the evidence says the memo represented Justice Rehnquist's views.

The title of the memo is "A Random Thought on the Segregation Cases." Does that sound like he was stating Justice Jackson's views? Of course not.

The memo ends by it saying he has been "excoriated" by his liberal colleagues. If these are Justice Jackson's views in that memo, then is he saying that the liberal colleagues of Justice Jackson were excoriating him? Come on now. Other members of the Court excoriating their fellow colleague? Does Justice Rehnquist want us to believe that the liberal members of the Court were excoriating Justice Jackson?

Can we believe that Justice Jackson was excoriated by liberal colleagues for having a sincere view about this case? Can we believe that Justice Jackson would announce to his fellow Justices at the conference that he had been excoriated, as the memo indi-

cates? It strains one's credulity. It is unbelievable.

Justice Rehnquist's own colleagues, his fellow clerks, indicate who those liberal colleagues are. One of those fellow colleagues recently said, "Unquestionably, in our luncheon meetings with the clerks he—meaning Justice Rehnquist—did defend the view that Plessy was right."

Another problem with his explanation is that the first half of the memo is a gratuitous discussion of the history of court decisions on property rights. Can it be reasonably claimed that Justice Jackson lectured his fellow Justices about elementary propositions, when they were intimately familiar with this history?

Justice Rehnquist says that Justice Jackson supported the doctrine of separate but equal.

He said to the Senate in 1971 and in 1986 that Justice Jackson did not want to overturn Plessy. He makes that argument to support his position that it was not his memo but that it was Justice Jackson's.

But what were Justice Jackson's views at the time? Certainly not those indicated by Justice Rehnquist. We can pretty well conclude what Justice Jackson's view were. After all, Justice Jackson joined in the unanimous decision to strike down Plessy versus Ferguson.

Justice Rehnquist says, even if those were Jackson's view when the decision was handed down they were different when the Justices first conferred about the case. But then you check some other evidence and you look at the notes of Justice Jackson's fellow Justice, Justice Burton at the conference. Justice Burton's notes show that Jackson supported overturning Plessy, and another Jackson clerk said Justice Jackson was prepared to support a Court decision ending segregation. There is no evidence supporting Justice Rehnquist's claim or contention in this respect.

No other drafts or memos indicate Justice Jackson agreed with the statement that "I think Plessy versus Ferguson was right and should be reaffirmed." Those were the views of William Rehnquist, the clerk.

□ 1430

He had a right to have those views. He did not have a right to fail to state the facts in 1971 and then to indicate his position was exactly opposite and then indicate in 1986 that he had no views at all.

The supporters of Justice Rehnquist's interpretation point to a letter from Justice Rehnquist's fellow clerk, Donald Cronson, to the Senate in 1971;

That letter claimed Jackson asked for two memos—one supporting overturning the Plessy decision and the other supporting upholding it. Cronson claimed both memos were collaborative efforts.

But the Cronson account just does not withstand scrutiny:

First, if the memos were collaborative effort, why did not Justice Rehnquist ever mention that? Why did not he respond to all the controversy by saying he coauthored the memo with someone else? He did not say that?

Second, if the memos were collaborative efforts, why is each signed by only one clerk, WHR, William H. Rehnquist? No more, no less; no other names. It is not difficult to find at least 25 other memos that are signed the same way, WHR.

Third, with respect to the Cronson memo, Cronson's claim is that Justice Jackson asked for one memo supporting Plessy and the other one opposing it. But Justice Rehnquist, you will recollect, as I just told you, claimed that Justice Jackson favored reaffirming Plessy, not that he wanted argument on both sides.

Fourth, Mr. Cronson's memo is titled "A Few Expressed Prejudices on the Segregation Cases." That is not a title for a memo stating Jackson's views of the cases.

The fact is that Mr. Cronson's claim that the memo represented Jackson's views does not hold up.

Ten years ago, in a scholarly analysis of the Brown and Plessy decisions, Richard Kluger concluded:

> One finds a preponderance of evidence to suggest that the memorandum in question . . . was an accurate statement of his own views on segregation; not those of Robert Jackson, who, by contrast, was a staunch libertarian and humanist.

And to further refute Justice Rehnquist's denial that the memo represented his own views, we now have the statement of Justice Jackson's personal secretary of 9 years, Elsie Douglas. Ms. Douglas stated in a recent letter to Senator KENNEDY:

> It surprises me every time Justice Rehnquist represents what he said in 1971 that the views expressed in his 1952 memorandum concerning the segregation case then before the Court were those of Justice Jackson's rather than his own views. As I said in 1971 when this question first came up, that is a smear of a great man for whom I served as Secretary for many years.
>
> Justice Jackson did not ask law clerks to express his views. He expressed his own and they expressed theirs. That's what happened in this instance.

This is no ordinary memo about which we are speaking. And I must say that I somewhat apologize to my colleagues for taking so much time to talk about this, but I believe that it again bears on the question of the Justice' credibility, of his candor, of his truthfulness. We are talking about a memo in a matter that was not an ordinary case. The Brown case was the most important constitutional decision of this century.

The memo was a key issue in his 1971 confirmation. It is inconceivable, that Justice Rehnquist could have had no position in that case, at the time which is what his statement was in answer to Senator BIDEN's question. He did have a position. That position was to oppose integration of schools.

But the issue still is not whether he was right, wrong, or whether I agree or disagree. The issue is, has he deliberately misled the Senate and the American people on two separate occasions?

Enough on that issue.

Let us go to another issue having to do with integrity and credibility and candor and openness with the U.S. Senate—Justice Rehnquist's knowledge of the restrictive covenants on his property in Vermont. Again, I want to say the issue is not whether he did or did not buy a home subject to a restrictive covenant. He did. He is not the first nor the last person who did. The issue also is not whether or not he took some action in connection with the restrictive covenant, which I believe personally he should have done. But he did not do that. The issue still has to do, in my opinion, with his candor and with his frankness with the U.S. Senate.

On July 30, Senator LEAHY asked Justice Rehnquist about the restrictive covenant in his deed to his Vermont home purchased in July 1974. The covenant states:

> No feet of the herein conveyed property shall be leased or sold to any member of the Hebrew races.

Now Justice Rehnquist testified that he was not aware of the covenant "at the time" and "was advised of it a couple of days ago."

In other words he did not know of it at the time and he just learned about it, was just advised about it a couple of days ago.

But the facts indicate something totally contrary to that. The facts indicate that Justice Rehnquist was aware of the covenant "at the time."

There are two letters that show that he was made aware of the covenant "at the time" he purchased the property. One letter, from Justice Rehnquist's attorney, dated June 24, 1974, recommends that Mr. Rehnquist "examine closely the attached abstract deed of the main cottage property."

Now, that is a letter from his lawyer. He was a member of the Supreme Court at the time. He is told by his lawyer that he should examine closely the attached abstract deed of the main cottage property. That is the deed containing the restrictive covenant.

Now, a lot of people, you might say, would not pay too much attention, but we are talking about a Justice of the U.S. Supreme Court, a man who reads legal documents and legal papers

every single day of his life when he is sitting on the bench.

Can we believe that scholarly, erudite, able lawyer, William Rehnquist, Justice Rehnquist, totally disregarded his attorney's specific advice to "examine closely" the deed?

Now, as if that were not enough, there is another letter, dated about 10 days later, July 2, 1974. The second paragraph of that letter says:

The property is subject to restrictions relative to use * * * and ownership by members of the Hebrew race.

To restrictions relative to use—and ownership by members of the Hebrew race.

□ 1440

So he not only got one letter. He got two letters from his lawyer.

There is no question that Justice Rehnquist was aware of the covenant "at the time." But he told the committee that he was not aware of it and just had learned about it a few days earlier. It is hard to believe. But then there is another development.

An August 4, 1986, article in the Legal Times newspaper revealed that Justice Rehnquist had received the two letters from attorneys with information on the restrictive covenant. The headline of the article was: "Rehnquist's lawyer urged him to note deed restriction."

The article said:

Associate Justice William Rehnquist's lawyer in the 1974 purchase of a Vermont house said in an interview with Legal Times Friday that he had sent a letter to Rehnquist before the purchase advising him to read the property deed, including the condition set forth in the deed. One of those conditions was a covenant prohibiting sale or lease of the property "to any member of the Hebrew race."

At another point, the article mentions the second letter—and I have added the word "John" and I have added the phrase "lawyer for the sellers of the property" only for the purpose of this debate. And Willis, I might say, is the lawyer for Justice Rehnquist.

(John) Downs (lawyer for the sellers of the property) said that both he and Willis (lawyer for Justice Rehnquist) were aware of the restrictive covenant at the time of the sale. Downs read to Legal Times an excerpt from a letter dated July 2, 1974, from Willis in which Rehnquist's lawyer said he studied the deed.

According to Downs, the July 1974 letter states: "The property is also subject to restrictions relative to use, with rights of way, construction on the various parcels, and ownership by members of the Hebrew race."

Look what now develops. What an amazing coincidence of facts. On the very same day that the article appears, Justice Rehnquist who said he had not been notified and had not learned of the restrictive covenants until several days earlier writes a letter to Senator THURMOND, the chairman of our committee. And in that letter he said he reviewed his files and discovered that July 2, 1974 letter on restrictive covenants.

Mr. Justice, I respect you and I respect the office you hold. But, Mr. Justice, I wonder what you think about that kind of evidentiary development if the evidence only came out to contradict the witness' statement after it had been published in the newspapers, and then the witness came forward and reviewed and reversed his testimony.

Justice Rehnquist said in his letter to Senator THURMOND:

While I do not doubt that I read the letter when I received it, I did not recall the letter or its contents before I testified last week.

Before this debate is concluded, I will attempt to bring to the attention of my colleagues the innumerable occasions on which Justice Rehnquist has faulty recall. It is very difficult to comprehend. I understand certainly somebody who could not recall what happened on October 7, 1968, or 1972. Nobody would expect that. We are not talking about those kinds of matters. We are talking about recall of issues far more important than that, recalls having to do with a memo concerning the most important constitutional decision perhaps in this country, recall having to do with lawyers' letters that does not become apparent until such time as a newspaper publishes the facts.

Justice Rehnquist told us the facts only after truth was published. Until then, he said he didn't know about restrictive covenants. Then when the whole world learned the truth—then and only then did he admit the truth.

Again—as in case of military surveillance of private citizens an issue which I will discuss at a later point—we find a distinguished legal scholar unable to recollect very salient, and very significant facts.

This failure of recollection is not believable. I quote from a recent newspaper editorial in the Toledo Blade:

It is one thing for an ordinary home buyer to be unaware of a restrictive covenant in a deed, * * * it is quite different for a lawyer as astute as Mr. Rehnquist to plead ignorance. Quite simply, it is not believable * * *

In today's New York Times on this same subject about valid doubts about Justice Rehnquist, it states:

Confronted with restrictive covenants on two of his homes, the nominee first said he had been unaware of them. Then he wrote to the Senate Judiciary Committee that he had found a letter in his file cautioning that his Vermont home could not be sold to "anyone of the Hebrew race." He said he "undoubtedly" read that letter when buying the property in 1974 but did not recall doing so. If the Senate believes that, what does this say of the sensitivity of a Supreme Court Justice?

Mr. President, I ask unanimous consent that the entire New York Times editorial be included in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit No. 1.)

Mr. METZENBAUM. The fact is—he did know about the covenant; he read the letter which described it—clearly and prominently—in the second paragraph.

But what did he do about it? Nothing.

When he was up for Senate confirmation, I believe he just was frankly embarrassed. He says he searched his files "after the conclusion of his testimony" and found the letter. We now know the letter was sent only after public disclosure of it. The issue is not simply whether he had a restrictive covenant on his property. The question is what did he tell the U.S. Senate concerning his knowledge of that fact. Did he tell us the truth or did he not? In this case, we have a restrictive covenant on a property purchased by a lawyer, a very prominent lawyer, a Justice of the Supreme Court. It is not a covenant just filed away in the courthouse record. It is in his deed. And the two letters are sent to him which mention it.

It is a temptation to ignore these issues. He is the President's nominee. He is already on the Court. He has the ABA's endorsement. These are arguments in favor of quick confirmation. But issues of integrity cannot be ignored and we in the Senate must meet our responsibility. It matters whether Justice Rehnquist told the truth to the Senate Judiciary Committee. The integrity of the Court is at stake. Integrity issues are always important when Senate confirmation is involved. But they are especially important here. We are confirming the head of the Supreme Court of the United States. The Senate cannot ignore the issue of integrity.

□ 1450

I am frank to say that I wish that I did not feel compelled to stand here on the floor today to talk about these issues of integrity, candor, and truthfulness with reference to a Justice of the Supreme Court who is up for confirmation as Chief Justice of that Court. But I do not know how I could look myself in the mirror if I had not discussed with my colleagues this entire question. It is so basic, it is so fundamental, it relates so directly to the question of whether or not Justice Rehnquist should be confirmed as our Chief Justice. I believe that I would have preferred, I know I would have preferred, not to have raised the questions concerning his integrity today. I do not think I had any alternative.

I yield the floor.

EXHIBIT No. 1

VALID DOUBTS ABOUT JUSTICE REHNQUIST

President Reagan has earned the right to try to shift the philosophy of the Supreme

Court. But the Senate has an equal right to insist on high-quality appointments—particularly for Chief Justice, the noblest position in American law. The debate that begins today on the nomination of Justice William Rehnquist will properly turn on concerns beyond the mundanely partisan. The Senate's own investigation has raised valid questions about the nominee's credibility and convictions.

Justice Rehnquist has served on the high court for 15 years and there is no doubt about his legal ability or agreeable personality. But brilliance and courtesy are not enough. The Supreme Court's center seat demands a symbol of impartiality, fairness and integrity that resoundingly affirms America's commitment to equal justice. At critical junctures in his confirmation hearings, when senators sought to explore Justice Rehnquist's beliefs and past actions, he stonewalled with failures to remember and unpersuasive explanations of embarrassing facts.

As Assistant Attorney General in 1971, Mr. Rehnquist defended the Nixon Administration in Senate hearings into the military's surveillance of civilian protesters of the war in Vietnam. He testified then that plaintiffs suing the Defense Department had no case, yet still voted as a Supreme Court Justice in 1972 to throw out their lawsuit. When Senator Charles Mathias recently asked what role the nominee played in formulating the surveillance policy, he said that he couldn't remember. Does the Senate believe that?

Justice Rehnquist also testified this summer that he favored from the start the Supreme Court's 1954 school desegregation decision. A memorandum to the contrary that he wrote as a law clerk in 1952, he said, was not really his opinion but that of the late Justice Robert Jackson. Does the Senate believe that? And how does that testimony square with a memorandum that surfaced only last week in which Assistant Attorney General Rehnquist urged a constitutional amendment that would have permitted widespread evasion of this decision?

Confronted with restrictive covenants on two of his homes, the nominee first said he had been unaware of them. Then he wrote to the Senate Judiciary Committee that he had found a letter in his file cautioning that his Vermont home could not be sold to "anyone of the Hebrew race." He said he "undoubtedly" read that letter when buying the property in 1974 but did not recall doing so. If the Senate believes that, what does this say of the sensitivity of a Supreme Court Justice?

Accused of harassing black and Hispanic voters in Phoenix during turbulent elections in the 1960's, Justice Rehnquist has categorically denied over the years lodging even a legal challenge to any voter's qualifications. Yet a former Federal prosecutor has testified that he encountered Mr. Rehnquist in 1962 at a polling place where voters were registering complaints and that while denying impropriety, Mr. Rehnquist never denied having challenged persons attempting to vote. Can the Senate rest easy with this unresolved conflict?

Justice Rehnquist's unhappy record on matters of civil rights, civil liberties and judicial ethics is a legitimate concern. He has frustrated the Senate's inquiry with evasive and unconvincing replies. The Senate's pride and the serious task of passing a candidate for Chief Justice ought to make it demand more. This venerated post should not be conferred midst so much nagging doubt.

Mr. METZENBAUM. I ask unanimous consent that the following additional materials be printed in the RECORD in connection with the nomination of Justice Rehnquist.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ARTICLE IN NATION, SEPTEMBER 20, 1986

The almost daily revelations of examples of Justice William Rehnquist's deep hostility to civil rights would ordinarily be enough to kill a nomination for any public office. Assistant Attorney General William Bradford Reynolds was denied a short-term promotion in the Reagan Administration partly because of a civil rights record that is not much worse. Yet Rehnquist's nomination to a lifetime position as Chief Justice of the United States may sail through. Many senators think that since Rehnquist is already on the Court, his promotion will not change the vote count and, will therefore have little impact. Nothing could be more wrong or shortsighted.

First of all there is the obvious symbolism of the choice. The Court is in the forefront of the nation's quest for justice and liberty. Its mission, in Justice Lewis Powell's words, is to afford "protection [to] . . . the constitutional rights and liberties of individual citizens and minority groups against oppressive or discriminatory government action." Justice Rehnquist's record on and off the Court has been one of consistent opposition to every effort to provide such protection. To elevate to leadership someone with such a uniquely hostile record to the fundamental mission of the institution is to mock and disparage that mission. It amounts to saying to the nation, and indeed to the whole world, for whom the U.S. Supreme Court has been a model, that we don't take that mission seriously.

The symbolic effect of the appointment is increased by the fact that the Chief Justice speaks for the Federal judiciary, as well as the Court, to Congress, the legal profession and the nation and indeed the world.

There are also tangible considerations. The Chief Justice assigns the writing of opinions when he is in the majority. Like his predecessors, Rehnquist will probably write the most important opinions himself and will probably take on a large number of them. (He reportedly writes easily and quickly.) In the past, when he has spoken for the Court in a decision restricting someone's rights, he has used sweeping and often vague language, as in a recent case refusing to recognize a right to privacy against electronic tracking devices. The scope and ramifications of such opinions are broad and difficult to confine.

Conversely, on the rare occasions when Rehnquist has joined his colleagues in upholding someone's rights—and invariably these have been decisions in which the other eight are unanimous—he has defined the right narrowly, as in a recent case involving the rights of illegitimate children to child support. Rehnquist has set something of a record for lone dissents in decisions upholding civil rights. Given the opinion-assignment power wielded by the Chief Justice, Rehnquist is likely to indulge himself far less in such largely ineffectual gestures, and instead join the majority, writing the opinion himself or assigning a kindred conservative.

The role of assigning opinions gives the chief power over the other Justices, whose place in history once they ascend the Court is determined by when and what they write. Warren Burger was said to have used his power to punish Justices whose votes had displeased him.

As chief, Rehnquist's influence will be greater with new Justices than with those now on the bench. Because he may serve as Chief Justice for from ten to twenty years, at least five new Justices will join the Court during his reign, and probably more. No matter who appoints them or who they are, they will feel the power of the Chief Justice, particularly in their early years. Moreover, some Chief Justices, such as William Howard Taft, influenced appointments to both the lower Federal judiciary and the Supreme Court itself. Given Rehnquist's activist history, he may well emulate Taft in this respect.

Finally, the Chief Justice heads a vast adminsitrative apparatus: the Federal judiciary. He designates the members of special judicial bodies, including the Temporary Emergency Court of Appeals and the secret Foreign Intelligence Surveillance Act court. He also presides over the Judicial Conference, a policy-making body which proposes and evaluates rules and legislation affecting the Federal courts. He appoints the membership and staff of the conference and of its twenty judicial committees. These groups play a significant role in the administration of justice in this country, for they deal with matters such as class-action rules, discovery, probation and sentencing. The importance of this authority is magnified by the Chief Justice's role as the spokesman to Congress on these and other legislative matters affecting court administration.

The power of the Chief Justice of the United States may not be visible, but it is very real. The Rehnquist nomination should not be dismissed as a minor shift in the Court's seating arrangements. The lifetime leadership of the third branch of our government deserves the closest scrutiny.

HERMAN SCHWARTZ.

LEGAL DEFENSE FUND,
Washington, DC, August 8, 1986.

HON. HOWARD M. METZENBAUM,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR METZENBAUM: I am writing to provide the additional information requested at the August 1, 1986 hearing regarding the nomination of Justice Rehnquist to serve as Chief Justice.

(1) We have identified 33 cases in which Justice Rehnquist voted in favor of a black complainant in a race discrimination case. Of these, 31 were unanimous opinions; in the two remaining cases only a single Justice voted against the black complainant. A list of these decisions is set out in Table A.

(2) We have identified 14 race discrimination cases brought by or on behalf of blacks in which Justice Rehnquist cast the deciding vote. These include nine cases in which the rest of the Court was evenly divided, and four cases in which, because only eight Justices participated, a vote by Justice Rehnquist in support of the complainant would have had the effect of upholding by an equally divided vote a favorable decision in the Court below. In the remaining case, *Arlington Heights* v. *MCDH,* Justice Rehnquist's vote determined whether the lower court would be permitted to consider on remand the plaintiffs' racial discrimination claim. In every one of these cases Justice Rehnquist cast the deciding vote against the civil rights claimant. None of these cases involved a dispute about quotas, and none of

ATTACHMENT H

NEWS ARTICLE

Latino voters protest county recorder's misprint of election date on Spanish handout

by Marie Saavedra

Bio | **Email** | Follow: @**MSaavedra3TV**

azfamily.com

Posted on October 23, 2012 at 8:52 PM

Updated Tuesday, Oct 23 at 11:38 PM

PHOENIX -- An election misprint has caused a rift between the Maricopa County recorder and some Latino voters. Tuesday afternoon, a group of demonstrators rallied at the office with a calendar, accusing Recorder Helen Purcell of trying to suppress the Hispanic vote.

The Maricopa County Elections Department confirms that it printed the wrong date for Nov. 6 Election Day on 2,000 of 3,000 bookmarks made available to voters. The incorrect date of Nov. 8 was only printed on the Spanish language side of the handout.

This comes after controversy about what the elections office said about people going door to door collecting ballots -- whether or not that was allowed. Many get-out-the-vote

groups in the Latino community are doing that, so it caused some confusion. But last week, elections department spokeswoman Yvonne Reed said that it's no problem.

"If someone gives you their ballot and asks you to drop it off for them, there's nothing wrong with that," Reed said.

People working with groups like Mi Familia Vota have made it their life's work to mobilize Latino voters, so hiccups like these are frustrating.

"I take them for their word when they say that it's a mistake," said Mi Familia Vota State Director Francisco Heredia. "But we want to make sure. What steps are being taken so that individuals have the right information at their disposal?"

Mi Familia Vota isn't waiting to hear from the elections office, and they're taking it upon themselves through phone calls and door-to-door visits to make sure people know when and where to vote.

"We're working with county elections to make sure that everybody, especially our Latino community, has the right information so they can cast their ballot," Heredia said.

Tuesday afternoon, Maricopa County Supervisor Mary Rose Wilcox announced that she asked the county recorder to put out a series of TV advertisements to promote the correct date of Election Day in the wake of the misprint. There is no word if Purcell has agreed to it.

Response from Maricopa County Elections Department

NEWS ARTICLE

Politics

Topics: Arizona, election, Latinos, Maricopa County, provisional ballots, tally votes, voter suppression, voting problems

People wait in line to vote at the First New Life Missionary Baptist Church at 19th Ave. and Roeser, Tuesday, Nov. 6, 2012 in Phoenix. (AP Photo/The Arizona Republic, Tom Tingle)

Frustrated Latino groups in Arizona call for investigation into election process

by Alessandra Hickson
11:37 am on 11/24/2012

Two weeks after the election, all valid ballots have finally been counted in Arizona. Frustrated community organizers, who registered a record number of Latino voters, are raising questions about the integrity of the state's electoral process, however.

The tallies ended after officials allowed Maricopa and Pima Counties to extend their counts past last Friday. The extension gave counters time to get through tens of thousands of provisional ballots. While the final tallies did not change results announced on or shortly after election night, three Congressional races were undecided for three full days.

On election day, more than half a million votes had not been counted in Arizona. Election officials say that the hundreds of thousands of early mail-in ballots received just before election day are to blame for the delay. According to the LA Times, Maricopa County recorder's officials received 200,000 early mail-in ballots on election day alone and throughout the state, more than 600,000 ballots were left uncounted on election day — out of about 2.2 million ballots cast during this year's election.

RELATED: Arizona Latinos elated over turnout, frustrated over voter problems

The Secretary of State, Ken Bennett told the New York Times that it took just as long to count the ballots this year as it did in the last election. He said, "Speed is not our No. 1 goal. Accuracy is our No. 1 goal. But that doesn't mean we can't think of a way to speed up the process."

Regardless, Democrats are calling for a bipartisan investigation into the election process in Arizona, citing a lack of cohesion and the difficulty some mail-in voters had in deciphering sample ballots from real ones.

According to the Daily Beast, many grassroots voter advocacy groups and voters say that first-time Latino voters who signed up to get their ballots by mail claimed not to have received them at all. This forced many Latino voters to use provisional ballots. Provisional ballots are for citizens who are not listed in their elections rolls at their polling place and for people who were sent a mail-in ballot but decided to vote in person. This is done to make sure the citizen isn't voting twice.

More than 172,000 provisional ballots were cast in this year's election. An estimated 122,000 originated from Maricopa County, Arizona's largest county and home to about half its population.

While Maricopa's county's recorder, Helen Purcell, said it was possible some voters threw out their ballots because they didn't know what they were, advocates countered that Arizona should have run a better voter-education campaign. Groups cited Maricopa's October mishap, when several Spanish-language leaflets were sent out to Latino neighborhoods with the wrong election date listed. Officials blamed the mistake on a clerical error and revised the leaflets, but shortly after more were found with the wrong date listed in Spanish and the correct election date listed in English.

RELATED: Oops! Maricopa county provides wrong voting date again in election materials

Other advocacy groups, including Promise Arizona – part of a coalition that registered almost 35,000 voters this

year– told the Times that language barriers kept Spanish-speaking voters from properly understanding poll workers.

The vote-counting delay sparked hundreds of Latino youth to picket daily in front of the Maricopa County recorder's office last week, demanding faster results and more transparency.

Brendan Walsh, chairman of Campaign for Arizona's Future — a political action committee that is part of the Adios Arpaio campaign — told the LA Times that, "we cannot give them the benefit of the doubt when they made serious errors that show that they were not as attentive as they need to be in ways to include Latino voters and to count the Latino vote. There are certain mistakes that are inexcusable."

Secretary of State Bennett said he'd met with Latino advocates and officials to reevaluate the vote-counting system delays, but he said that there was no indication that a specific demographic was treated differently at precincts.

ATTACHMENT I

NEWS ARTICLE

Activist Groups Call Foul On Election Practices in Arizona

A sign points voters in the direction of a polling place in Maricopa County, Arizona in 2010. ((Seantoyer/flickr))

By EMILY DERUY (@emily_deruy)
Oct. 24, 2012

A series of missteps by Arizona election officials have some advocacy groups wondering whether the acts are actually intentional attempts to deter would-be voters.

Last week, election officials in Maricopa County listed the wrong election date on voter-registration cards written in Spanish, but the correct date on the English version. They erroneously named Nov. 8, two days after the actual Nov. 6 election date, as the last day to cast ballots.

The Maricopa County Recorder Helen Purcell also told voters last week that their early ballots could not be delivered to the post office or the county by anyone other than the person named on the ballot.

A local CBS station reports that Purcell said, "Being in custody of someone else's ballot without their permission is a Class 5 Felony."

While it is indeed a felony to vote in someone else's name, it is certainly

MOST POPULAR | MOST RECENT


Newborn Dies After Parents Killed in Hit-Run Accident


Casey Anthony Forced Out of Hiding


Child 'Functionally Cured' of HIV


Florida Sinkhole Home Demolished


Woman Addicted to Eating Deodorant


Jodi Arias Mounts Final Defense
15 minutes ago


Jeb Bush's Book Rejects Path to Citizenship
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White House: Legalize Cellphone Unlocking
37 minutes ago

not illegal for a person to ask someone to drop a sealed, perfectly viable ballot in the mailbox or at the county office.

It is also not illegal for volunteer groups such as Promise Arizona in Action to pick up and deliver early ballots.

Purcell issued a statement on Tuesday denying that she told the reporter it was a felony.

Second Presidential Debate: Polls Show Stakes Are High **Watch Video**

Rick Santorum Surges Day Before Iowa Caucuses **Watch Video**

Nov. 8, 1960: JFK and Jacqueline Vote **Watch Video**

"First of all, I never said that it is illegal, much less a Class 5 felony, to collect, possess and deliver ballots of voters. Indeed, this office has worked cooperatively with a host of organizations, of all parties and persuasions, to assist voters get their ballots to the polls."

On Tuesday of this week, bookmarks printed and distributed by the County Recorder's office also had the correct election date on the English-language side, but the wrong date (Nov. 8 again) on the Spanish-language side.

Purcell also addressed the erroneous date in her Tuesday statement: "Concerning the regrettable error on the Spanish-language Voter ID and bookmark: I wish I could say we never made a mistake in this office. But we do. However, the suggestion that this office would be a party to a dark conspiracy to depress voter turnout among any constituency or ethnic group is contrary to the history, the commitment and ideals of this office, my staff and my life's work," she wrote.

"That's three strikes for Purcell, and she knows it," said Rudy Lopez, national political director for the Campaign for Community Change in a statement. "Purcell has made it hard not to suspect an obvious attempt at the County Recorder's office to suppress Latino voters."

The Democratic-leaning activist group has accused Republican election officials of suppressing the Hispanic vote in Arizona.

Controversial Maricopa County Sheriff Joe Arpaio, a vocal proponent of tough immigration policies, and Republican Rep. Jeff Flake are both fighting tough campaigns.

"With Arpaio and Flake in close election bids, no other conclusion can be drawn but that these officials have decided to throw their ethical and legal obligations aside and suppress the vote in a last ditch effort to save their candidates," Lopez said.

A spokesperson for the Flake campaign declined to comment and the Arpaio campaign did not respond to a request for comment.

A case was also filed against Purcell in late 2011 alleging that she improperly rejected signatures on a petition to recall the Fountain Hills vice mayor.

Tea Party-backed groups such as True the Vote, which says it upholds election integrity by watching polls and looking for voter fraud, have spawned offshoots, including Verify the Vote in Arizona.

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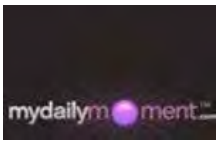

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knows-better Catherine Engelbrecht, president of True the Vote claims that it is non-partisan

12:02 AM EDT
Nov 02, 2012

yet "In 2009, Catherine helped found King Street Patriots, a non-profit group with a model for activism that can best be defined as community organizing for conservatives. With guiding principles of American exceptionalism, constitutional governance, and civic duty, King Street Patriots aims to provide a permanent platform from which groups and individuals can strategically mobilize in their communities, their message made exponentially stronger by a loose alliance with fellow Patriots all across the nation"Through her organizations she has made donations to tea party and republican candidates only.Doesn't sound non-partisan to me.And where is the voter fraud that she claims is so rampant?

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Barbara Walters Returns: 'I'm Fine and I'm Healthy'

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ATTACHMENT J

NEWS ARTICLE

Critics assail reform plans for Arizona elections

Teens get their photos taken before a protest against election bills seen as restrictive at the Arizona Capitol in Phoenix.

Michael Schennum/The Republic

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By Mary Jo Pitzl
The Republic | azcentral.com
Sun Mar 3, 2013 11:55 PM

Election 2012 — with its surge of Latino voters, increase in impossible-to-track campaign donations, and hotly fought ballot measures — is reverberating at the Legislature in a flurry of bills that seek to remedy the problems exposed by last fall's contests.

But many of the bills, including three approved in the Senate last week, could backfire. County elections officials promoted much of the legislation in the name of trying to avoid a repeat of last fall's issues, when a flurry of provisional ballots caused final results to be delayed for more than a week. Many voters were forced to file provisional ballots because their names appeared on early-voting lists.

But new restrictions could alienate voters and lead to further confusion, if not lawsuits, critics argue.

One bill would pare down early-voting lists; another would make it more difficult to deliver other people's ballots to polling places; and other bills would make it more difficult to place citizen initiatives on the ballot.

The loudest complaints have come from Arizona's Latinos, who led aggressive voter-registration drives that added thousands of new

ELATED INFO

The bills

Bills proposed to address the problems that occurred during the November general election would do the following:

Pare down early-voting lists.

Make it more difficult to deliver other people's ballots to polling places.

Make it more difficult to place citizen initiatives on the ballot.

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voters to the rolls. Those voters tend to cast their ballots overwhelmingly for Democrats.

Others have criticized the double standard that would be created for petition-signature requirements: strict compliance for citizen-driven initiatives, but a looser standard for candidates.

“We should be working on encouraging folks to participate in our elections, not taking that right away,” said Sen. Steve Gallardo, D-Phoenix, who has led the charge against bills that would tighten rules for Arizona’s popular early-ballot program.

Sam Wercinski, executive director of the Arizona Advocacy Network, said the bills are not so much a reaction to the 2012 election as to the protests sparked by the two-week wait for results.

“We’ve always had large numbers of provisionals,” said Wercinski, whose group lobbies for voting access. “I think politicians saw how powerful the permanent early-voting list and vote-by-mail are for new voters, and particularly Latino voters, and that’s why we have all these bills.”

Even elections officials, who would have to enforce whatever changes the Legislature approves, say the best solution to confusion over early voting is increased voter education. However, there is no money in the current bills to provide for greater voter outreach.

Lee Rowland, an attorney at the New York-based Brennan Center for Justice, said Arizona is not alone in reacting to last fall’s elections with a stream of proposed changes.

There was an “unprecedented level of restriction” in the 2012 election, she said, such as the refusal of Florida Gov. Rick Scott to extend early-voting hours to deal with long lines and confusion in Pennsylvania over a new voter-identification law.

“It’s really important that the focus be on actual problems, not manufactured problems,” Rowland said. “What we really shouldn’t see is a return to some of the restrictive practices that happened before the election.”

To hear the backers of some of the key bills at the Capitol, Arizona’s laws weren’t restrictive enough. From trying to rein in who can return a voter’s ballot to how much scrutiny should be given to voter signatures on petitions, the bills seek to tighten the rules.

Early-vote troubles

Many of those provisional ballots that caused problems in last fall’s election came from voters who had signed up on the permanent early-voting list and received a ballot in the mail. But on Election Day, for any number of reasons, people who received an early ballot walked into a polling place and either dropped it off or asked for a ballot. Those who got a new ballot had to vote provisionally so elections workers could verify that they had not voted twice. That process added time to the tabulation process.

It’s not a phenomenon unique to 2012: Ever since Arizona created the early-voting list, late-arriving “early” ballots have slowed elections returns.

Senate Bill 1261 would thin out the permanent early-voting list by automatically removing any voter who does not vote by mail for two consecutive election cycles.

The clock would start ticking with the 2010 election, meaning voters who didn’t cast an early ballot in 2010 and 2012 would be purged. They could still vote, but would have to do it the old-fashioned way by going to the polls.

The Arizona Voters Coalition doesn’t like the automatic nature of the purge. Rather, this collection of civic groups said, the state should let voters opt out of the list. Coalition members include the League of Women Voters of Arizona, the Inter-Tribal Council and Mi Familia Vota.

The group also objected to the bill’s original penalty of imposing a Class 5 felony, punishable by up to 11/2 years in prison, on anyone who knowingly altered a voter-registration form without consent of that voter. Sen. Michele Reagan, R-Scottsdale and the sponsor of SB 1261, reduced the penalty to a Class 6 felony, which often is bargained down to a misdemeanor.

The Senate approved the amended bill last week on a party-line 16-12 vote, with Democrats opposed. It’s now in the House.

The state Democratic Party assailed Reagan over the bill, as well as two others approved by the Senate, sending out a news release headlined “Help stop voter suppression in Arizona” and charging that the bills were part of her strategy to nail down the GOP nomination for secretary of state in 2014.

Reagan, who’s been clear about her interest in the top elections post, said the bills come with the backing of county elections officials, both Democrats and Republicans. They resulted from study sessions last year

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that involved an array of people involved in the elections process who were trying to plug the holes plaguing the system.

However, she never invited the Latino organizing groups that mobilized thousands of new voters. They held a news conference, testified at the Elections Committee hearings Reagan chairs and, just last week, staged a silent protest that led to their ejection from a Senate hearing room. About a dozen young people held up small signs claiming Reagan was anti-Latino.

These grass-roots groups are particularly upset with another Reagan bill that would limit who can carry a voter's ballot into a polling place. It carries a Class 6 felony penalty. Currently, anyone, or any group, can take in ballots, a practice that Reagan last month said she found appalling.

SB 1003 would require anyone who delivers a ballot on behalf of a voter to sign a statement that they have the voter's permission to do so. It's a concession to critics of the original bill, which would have limited the practice to immediate family members or roommates.

Reagan questions whether protesters realize she's amended the bill to allow the voter to designate anyone they want to deliver the ballot. And she has set up meetings to discuss concerns with these groups, saying they had never asked before they launched their protests.

SB 1003 is a response to the practice of grass-roots groups that signed up thousands of Latino voters and then collected their ballots for delivery to the polls.

"A lot of people trust us more than the U.S. mail to take in their ballots," said Brendan Walsh, who worked on voter registration and turnout with Central Arizonans for a Sustainable Economy.

SB 1003 also passed the Senate on the same 16-12 party-line vote. Sen. Jack Jackson Jr., who represents the Navajo and Hopi tribal areas, said SB 1003 could have a "devastating" impact.

"Republicans want to make a felon out of someone helping their neighbors to vote, but many members of our tribal communities live in remote areas and depend on help to deliver their early ballots," Jackson, a Democrat, said in a statement.

Initiative reform

Last summer saw courtroom battles over two of Arizona's most contentious ballot initiatives: to dedicate a permanent sales-tax increase to education and to create an open-primary system. Both withstood their challenges but lost at the polls.

But the legal battles could have turned out differently if SB 1264, also sponsored by Reagan, had been in place. The Senate approved the bill 16-12.

Among the two dozen changes the bill proposes is one that would make "strict compliance" the standard for voter signatures on initiative petitions.

In the court challenge to the open-primary system, the judge relied on a "substantial compliance" standard that allowed certain voter signatures to be counted, although opponents argued they should be tossed.

Chris Herstam, an attorney and former state lawmaker, questioned why the Legislature is creating a tougher standard for voter-initiated measures while not imposing it on their own candidate campaigns.

"An obvious double standard exists by giving candidates the benefit of the doubt, but not citizens who wish to utilize their constitutional rights," said Herstam, who supported the open-primary system.

This provision of SB 1264 would "neuter" the 101-year-old citizen-initiative process, he said.

Jim Drake, staff attorney for the secretary of state, said the rules for candidate petitions are in a different statute and should be looked at separately.

Another provision of the bill would clarify that only a copy of a citizen initiative that is time- and date-stamped by the Secretary of State's Office would qualify as the official version.

Backers of the education sales tax relied on a version of their measure that had been submitted electronically when they circulated petition sheets. The courts upheld the education supporters, and the measure qualified for the ballot over the objection of opponents.

However, the ensuing campaigns on the education sales tax and the open primary were defeated largely because of an infusion of money from non-profit corporations that are not required to disclose their donors.

Reagan said she couldn't find a way to force those groups to disclose their donors, and the Senate last week defeated a Democratic amendment that was an attempt to put the disclosure burden on the recipient of the outside contributions.

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