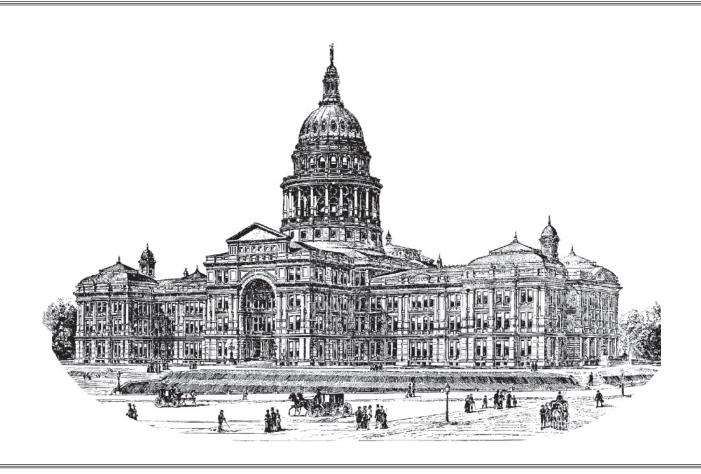


# Interim Report

TO THE 83RD TEXAS LEGISLATURE



House Committee on

**E**LECTIONS

JANUARY 2013

## HOUSE COMMITTEE ON ELECTIONS TEXAS HOUSE OF REPRESENTATIVES INTERIM REPORT 2012

## A REPORT TO THE HOUSE OF REPRESENTATIVES 83RD TEXAS LEGISLATURE

LARRY TAYLOR CHAIRMAN

COMMITTEE CLERK NICOLE SUNSTRUM



## Committee On Elections

January 4, 2013

Larry Taylor Chairman P.O. Box 2910 Austin, Texas 78768-2910

The Honorable Joe Straus Speaker, Texas House of Representatives Members of the Texas House of Representatives Texas State Capitol, Rm. 2W.13 Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Elections of the Eighty-Second Legislature hereby submits its interim report including recommendations for consideration by the Eighty-third Legislature.

Respectfully submitted,

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#### INTRODUCTION

At the beginning of the 82nd Legislature, the Honorable Joe Straus, Speaker of the Texas House of Representatives, appointed 9 members to the House Committee on Elections: Larry Taylor, Chair; Ana Hernandez Luna, Vice-Chair; Leo Berman; Dan Branch; Cindy Burkett; Joe Farias; Jason Isaac; Phil King; and Marc Veasey.

The House Rules adopted by the 82nd Legislature give the House Committee on Elections its jurisdiction. The committee shall have nine members, with jurisdiction over all matters pertaining to:

- (1) the right of suffrage in Texas;
- (2) primary, special, and general elections;
- (3) revision, modification, amendment, or change of the Election Code;
- (4) the Secretary of State in relation to elections;
- (5) campaign finance;
- (6) the duties and conduct of candidates for public office and of persons with an interest in influencing public policy; and
- (7) the following state agencies: the Office of the Secretary of State and the Texas Ethics Commission.

Four charges were assigned to the committee for study. The committee has completed its hearings and has issued the following report. All interim charges including the charge, monitor the agencies and programs under the committee's jurisdiction, were undertaken by the committee as a whole and no subcommittees were appointed.

## HOUSE COMMITTEE ON ELECTIONS

## INTERIM STUDY CHARGES AND SUBCOMMITTEE ASSIGNMENTS

CHARGE 1	Examine the benefits and risks of using mobile voting stations in Texas.
CHARGE 2	Examine ways to more clearly define a residence address for voter registration purposes, giving special consideration to college-age students.
CHARGE 3	Monitor the implementation and impact of the MOVE Act on the state and on municipalities. Make legislative recommendations, as needed, to ensure a smooth implementation of the law. (Joint with the House Committee on Defense & Veterans' Affairs)
CHARGE 4	Monitor the agencies and programs under the committee's jurisdiction and the implementation of relevant legislation passed by the 82nd Legislature.

## INTERIM CHARGE #1

Examine the benefits and risks of using mobile voting stations in Texas.

#### **MOBILE VOTING**

#### **PUBLIC HEARING**

The House Committee on Elections held a public hearing on its Interim Charge #1 related to the benefits and risks of using mobile voting stations in Texas on September 24, 2012 at 10:00 a.m. in Austin, Texas in the Capitol Extension, Room E2.014. The following individuals testified on the charge:

Stan Stanart, Harris County

The following section of this report related to mobile voting is produced in large part from the oral and written testimony submitted to the committee.

#### **BACKGROUND**

According to the Texas Secretary of State ("SOS"), what is commonly known as "mobile voting" or "movable voting" is a reference to the use of temporary early voting locations. Mobile voting is not defined in the Texas Election Code ("TEC") but represents a system in which temporary branch locations move around the county. Depending on a county's resources, the movable voting stations may be a physical location that voting equipment is delivered to or in some cases, a vehicle, such as an RV, that houses voting equipment. For example, the early voting location would "move" from the clerk's main business office to various locations around the county or political subdivision. The goal of such stations is to provide more opportunities to vote and increase voter turnout.<sup>1</sup>

A mobile voting station must meet the same requirements as other voting stations. Section 1.005(22), TEC, defines "voting station" as a voting booth or other place where voters mark their ballots or otherwise indicate their votes at a polling place. Station accessibility is addressed in Section 61.013(a), TEC, which provides that a county with a population of 10,000 or more, but less than 20,000, may be excused from the requirement to have an accessible voting station in every polling place and every early voting location, provided it (1) makes a showing of undue burden, (2) provides at least one accessible voting station on election day and during the early voting period, and (3) provides an accessible "mobile voting station" that is deployed at least once at each polling place used for early voting by personal appearance. Similarly, a local political subdivision in a county with a population of 10,000 or more, but less than 20,000, may be excused from the requirement to have an accessible voting station in every polling place and every early voting location if it complies with (1) – (3).<sup>2</sup>

#### **CURRENT**

Because mobile voting does not technically exist in the TEC, there are not standard guidelines on how to proceed with their placement. The number and nature of these stations vary from county to county depending heavily on the resources available. The Commissioners' court (in counties with a population under 100,000) or the governing body of the political subdivision, as appropriate, determines the temporary branch locations, and the days and hours during the early-voting-in person period when the branches will be open. In many of the smaller counties, the commissioners court establishes at least one branch early voting location to accommodate county voters.<sup>4</sup>

In counties with a population of 100,000 or more, commissioners court must establish temporary branch locations with varying days and hours of operation.<sup>5</sup> According to the 2010 Census, there are 39 counties exceeding 100,000. These counties, by size, include: Harris, Dallas, Tarrant, Bexar, Travis, El Paso, Collin, Hidalgo, Denton, Fort Bend, Montgomery, Williamson, Cameron, Nueces, Brazoria, Bell, Galveston, Lubbock, Jefferson, Webb, McLennan, Smith, Brazos, Hays, Johnson, Ellis, Ector, Midland, Guadalupe, Taylor, Wichita, Gregg, Potter, Grayson, Randall, Parker, Tom Green, Comal, and Kaufman.<sup>6</sup>

There is little information on which counties and other political subdivisions (in the county population range of 10,000-20,000) take advantage of the opportunity for accessible mobile voting stations. Many political subdivisions such as cities and school districts use only one early voting location. Therefore, moving an accessible voting station from one early voting location to another, may not be needed.

#### RECOMMENDATIONS

While the TEC does not define "mobile voting", political entities conducting Texas Elections

should help the Texas Legislature identify areas of improvement for program uniformity, appropriate regulatory oversight and voter access.

## INTERIM CHARGE #2

Examine ways to more clearly define a residence address for voter registration purposes, giving special consideration to college-age students.

#### **RESIDENCE ADDRESS**

#### **PUBLIC HEARING**

The House Committee on Elections held a public hearing on its Interim Charge #2 related to ways to more clearly define a residence address for voter registration purposes, giving special consideration to college-age students on September 24, 2012 at 10:00 a.m. in Austin, Texas in the Capitol Extension, Room E2.014. The following individuals testified on the charge:

Keith Ingram, Texas Secretary of State Cheryl Johnson, Galveston County Stan Stanart, Harris County

The following section of this report related to residency is produced in large part from the oral and written testimony submitted to the committee.

#### **BACKGROUND**

The question of residency has been a historical matter in Texas dating back to 1936, in which the courts ruled that residency is in part a voter's intention and that the voter's intention must be reviewed to determine residence (McBeth v. Streib).

In 1964 through Mills v. Bartlett, the courts declared that "...neither bodily presence alone nor intention alone will suffice to create the residence, but when the two coincide at that moment the residence is fixed and determined. There is no specific length of time for the bodily presence to continue." Mills further concluded that residence depends upon the circumstances surrounding the person involved and largely depends upon the present intention of the individual. The court stated that, "volition, intention and action are all elements to be considered in determining where a person resides and such elements are equally pertinent in denoting the permanent residence or domicile." The TEC defines residence as "...domicile... one's home and fixed place of habitation to which one intends to return after any temporary absence."

Further, the El Paso Court of Appeals held in 1992 (Simmons v. Jones) that "the voter's intention was material to a proper determination of the voter's residence requirement." Commercial Standard Ins Co. v. Nunn concluded that "coupled with the voter's intention, there must also exist a physical connection to the place in which such voter is claiming residence."

After Hurricane Ike, the SOS Director of Elections at the time, notified Texas election officials that "...the voter is the one who decides what the voter considers to be home....if a person...intends to return, then that person can maintain their voter registration in their home county..." The law further requires that residency must occur for 30 days prior to being eligible to vote.<sup>11</sup>

#### **CURRENT**

Overall, the question of residency is a perennially difficult one to answer. Furthermore, the matter greatly impacts voter registration. According to case law, the primary determining factor of residency is the intent of the candidate or voter. Therefore, in the case of a college student, residence would be a matter of choice.<sup>12</sup> Students would determine whether their college or home residence serves as the primary residency for candidacy or voting purposes.

#### RECOMMENDATIONS

Intent is heavily relied on in past case law to determine residency for voting. While courts have issued opinions on multiple occasions, the matter remains an issue that receives scrutiny to this day. The Texas Legislature could find value in clarifying or defining "intent" to prevent future confusion.

## INTERIM CHARGE #3

Monitor the implementation and impact of the MOVE Act on the state and on municipalities. Make legislative recommendations, as needed, to ensure a smooth implementation of the law.

#### MOVE ACT

#### **PUBLIC HEARING**

The House Committee on Elections held a joint public hearing with the House Committee on Defense and Veterans' Affairs on Interim Charge #3 related to the MOVE Act on October 9, 2012 at 10:00 a.m. in Austin, Texas in the Capitol Extension, Room E1.030. The following individuals testified on the charge:

Keith Ingram, Texas Secretary of State Morgan Little, Texas Coalition of Veterans Organizations Joy Streater, Comal County

The following section of this report related to the MOVE Act is produced in large part from the oral and written testimony submitted to the committee.

#### **BACKGROUND**

The 82nd Texas Legislature passed SB 100 in order to implement the federal MOVE Act. The main functions of SB 100 were (1) to increase the coverage of the 45 day deadline to any federal and state election, (2) to modify and regularize the Federal Postcard Application ("FPCA") process, and (3) to make sure that the election calendar schedule was elongated in order to accommodate the 45 day deadline to mail out military and overseas ballots (a process that was placed in the Election Code in 2005). An additional function of SB 100 was to provide a mechanism for local entities to move their elections from the May uniform election date to November uniform election date.

To facilitate a change in the election date or a change in the terms of office to conform to a new election date, SB 100 authorized:

- a home-rule city to change the general election date or to allow the election of all members of the governing body at the same election;
- a school board to change the length of terms for trustees to staggered terms of either three or four years;
- a general-law municipality whose governing body serves one- or three-year or staggered terms to change the length of term to two years or allow for the election of all members at the same election; and
- any political subdivision that elects it governing members to a term with an odd number of years to change the length of term to an even number of years.<sup>13</sup>

The SOS must provide information regarding voter registration procedures and absentee ballot procedures, including procedures related to the federal write-in ballot, to be used by eligible voters under the federal Uniformed and Overseas Citizens Absentee Voting Act. The SOS also

acts as the state coordinator between military and overseas voters and county election officials. In addition, the SOS, in coordination with local county officials, must implement an electronic free-access system for someone voting early by mail to determine if the application and ballot have been received and the ballot's status.<sup>14</sup>

Regarding the additional function of SB 100, a number of local elected bodies moved their elections from May to November. With the exception of a few isolated instances, this was accomplished with little trouble or fanfare.<sup>15</sup>

This issue was also studied last interim by the House Committee on Elections. Their report addressed these findings and can be found at the following link:

http://www.house.state.tx.us/\_media/pdf/committees/reports/81interim/House-Committee-on-Elections-Interim-Report-2010.pdf

The committee held a hearing on October 9, 2012, to gather more information about issues relating to Military and Overseas Voter Empowerment ("MOVE") Act to fulfill the interim charge.

#### **CURRENT**

Under changes made by SB 100, the FPCA process has been updated in Texas Election Administration Movement ("TEAM"), the Texas statewide voter registration database, without any major problems. Counties have adapted well to the changes. The users of the Federal Voting Assistance Program's website (used in order to request, access, and download to the FPCA) have generally done so without issue. The Federal Voter Assistance Program ("FVAP") reports that Texas is one of the top states, by number of visitors, for use of their website to apply for overseas ballots.<sup>16</sup>

The SOS has emphasized to Texas counties the necessity of meeting the 45 day deadline. This

year, the Texas election calendar was revised through court orders from the Federal three judge panel in San Antonio after its interim redistricting maps were vacated by the U.S. Supreme Court. When the March 6th primary date was no longer feasible, the Court spent a great deal of time talking to the political parties, County election officials, and the SOS about a new schedule. The emphasis in those discussions related to accommodating deadlines necessary to have ballots mailed to military and overseas voters by the 45th day before a new primary date. Additionally, the court was interested in picking a runoff date that accommodated the elongated schedule between the primary and runoff that the 82nd Legislature enacted in SB 100.<sup>17</sup>

The period prior to the new primary date of May 29th was extremely busy for the counties. All counties were required to complete state and local redistricting upon new maps drawn by the court. Counties redrew precinct lines in accordance with TEC Section 42.005. Once voters were assigned to new precincts, the counties mailed new voter registration cards to every eligible voter. Texas counties faced an increase in calls and voter registration applications due to a revised election calendar, that resulted in a delay in the mailing of new voter registration cards. With uncertainty and multiple changes to the Texas election calendar, all but a handful of counties met the deadline of mailing military and overseas ballots by April 14th, 2012. The majority of problems in meeting the deadline were caused by the need to correct ballots as a result of redistricting confusion and normal issues associated with local party officials ordering ballots in a timely manner. Of the handful that were late, most were sent by the following Monday and the remainder went out during the following week.

The July 31st, 2012 runoff did not encounter the same challenges presented during the May 2012 Primary Election, due to the fact that counties did not compress nearly a year's workload into one month. In addition, the ballot was much shorter. A few remained unsubmitted, yet, all the

overseas ballots were mailed or emailed by the Monday following the June 16th deadline.<sup>20</sup> The number of MOVE Act ballots that were requested, returned, and counted for any of the 2012 election year is undetermined. Counties are not expected to have such information until after the general election, provided by the SOS's Election Assistance Commission's post-election survey to the counties. However, in 2008 there were 53,058 ballots sent overseas and 37,863 of these were counted and in 2010 there were 17,863 ballots sent overseas and 17,322 were counted.<sup>21</sup>

#### RECOMMENDATION

The 83rd Legislature should continue to monitor the implementation of the MOVE Act to ensure Texas military and overseas ballots are sent, received and counted accurately.

## INTERIM CHARGE #4

Monitor the agencies and programs under the committee's jurisdiction and the implementation of relevant legislation passed by the 82nd Legislature.

#### **IMPLEMENTATION**

#### **PUBLIC HEARING**

The House Committee on Elections held a public hearing on its Interim Charge #4 related to implementation of relevant legislation on September, 24, 2012 at 10:00 a.m. in Austin, Texas in the Capitol Extension, Room E2.014. The following individuals testified on the charge:

Kelly Canon, Self Bruce Fuller, Self Keith Ingram, Texas Secretary of State Cheryl Johnson, Galveston County Betsy Schonhoff, Texas Secretary of State Stan Stanart, Harris County Sheryl Swift, Galveston County

The following section of this report related to implementation of legislation is produced in large part from the oral and written submitted to the committee.

This section is a summary of the implementation of some of the election bills passed during the 82nd legislature.

#### HB 1570 and HB 2194

HB 1570 and HB 2194 (in part) related to changes to the volunteer deputy registrar program including requiring volunteer deputy voter registrars ("VDRs") to undergo training, to be Texas residents and to prohibit paying VDRs based on the number of applications completed or according to quotas of applications. These requirements and the training materials were precleared by the Justice Department and implemented in March 2012. However, in February of 2012, a lawsuit was filed by Project Vote/Voting for America against the SOS and the Galveston County tax assessor collector. The Federal District Court in Galveston issued a preliminary injunction on August 2, 2012 against five of the VDR requirements. The 5th Circuit Court of Appeals stayed that injunction a month later on September 6, 2012. The plaintiffs sought emergency relief from the U.S. Supreme Court. Justice Scalia requested that Texas respond by September 20, 2012. A response was filed, the new law is in effect, pending further ruling from the courts.<sup>22</sup>

#### Other Elections Bills:

- HB 174 required the SOS to use the deceased persons list from the Social Security Administration ("SSA") to assist in removing such persons from the voter registration rolls. This requirement has been met. A list of deceased persons was procured from the SSA by the SOS's office and matched with the county information. At this time, a Travis County District Court has issued a temporary restraining order barring the SOS office from "further instructing counties" regarding the cancellation of registration for non-responsive weak matches. The SOS is in compliance with the Travis County order.<sup>23</sup>
- HB 184 clarified that the SOS must declare an uncontested candidate for a legislative

vacancy elected in a certain timeline. The SOS has been authorized since 2001 to declare an uncontested candidate elected.

- HB 360 required language on a ballot for the proposition of a bond to include a general description of the purpose of that bond. The governing bodies holding such elections are aware of the new requirements and are in compliance.
- HB 1135 prohibited amending a candidate application or a petition filed in lieu of paying a filing fee after the deadline. It is interesting to note that there was little practical application of HB 1135 to the 2012 Primary. In fact, the federal court order authorized amendments, in certain circumstances, to applications and petitions that were already filed.
- HB 1136 made changes regarding the selection of early voting workers, members of the early voting ballot board and the implementation of processing ballots by mail in a general election. These new procedures were first implemented for the 2012 Primary.
- HB 1226 made explicit that persons who have received deferred adjudication and have not been convicted of a felony are eligible to vote. This has been implemented.
- HB 1401 provided that "annexed" citizens may vote in a municipal local option liquor election that occurs after their annexation. It also changed the number of signatures needed on the petition to trigger a local option election. The SOS has revised their online outline on local option liquor elections to reflect this change.
- HB 1503 required that special peace officers appointed by an election judge be licensed as a peace officer by the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE"). The SOS handbook for Election Judges and Clerks has been updated to reflect this change.

- HB 1528 made changes to the consolidation of election precincts in a primary election. Some consolidation did occur this past primary and even more occurred during the primary runoff election. Consolidation caused some delays and long lines in Harris County during the runoff election due to an increase in voter turnout that exceeded the expectations of county officials. According to information received by the Committee, only a handful of counties consolidated down to one election precinct for the primary runoff. No county consolidated down to one election precinct for the primary.
- HB 1545 allowed some political subdivisions to move their elections from the May uniform election date to the November uniform election date. Many political subdivisions have taken advantage of this new law and a number of others are considering the same option.
- HB 1593 amended the candidate's application form to require that a space be made for a
  candidate's email address. A candidate's email address is considered "optional"
  information on the form. The SOS has amended their candidate application forms to
  collect such information.
- HB 1678 subjected meetings of the county election commission and the joint elections commission to the Open Meetings Act. At the present time there is only one joint elections administrator in Texas (Swisher County) and one position (Gray County) having been recently abolished. At least one county is discussing creating a joint elections administrator position. There are currently 83 county elections administrators in Texas (excluding the one joint elections administrator).
- HB 1789 authorized the SOS to make direct payment of primary funds to a county with a population of 100,000 or more upon request of the county election officer. They have

implemented this new statute on a somewhat limited basis. The state has opted to allow party chairs of such counties to indicate how much of the payment should go directly to the county during the submission of the estimate and final reporting processes, rather than the counties specifying the amount.

- HB 1904 changed the filing deadline for a write-in candidate for county or precinct chair in the primary to 6:00p.m. of the fifth day after the regular filing deadline. There is no experience with this new deadline due to a federal court order relating to the 2012 Primary. The order provided that the write-in candidate deadline for the office of county chair was the same as the regular filing deadline and stated no write-in candidates for the office of precinct chair would be accepted.
- HB 2194 made several changes to the VDR program (as mentioned in connection with HB 1570), including expanding the county wide polling place program. Turnout results are inconclusive on whether or not the programs are increasing voter participation. Data should improve as we have repeat participation in similar elections by counties. The bill also made small changes to the procedure for appointment of election judges and election day procedures that have been implemented this year without any difficulties.
- HB 2449 prevented applications for ballots by mail from being made available for public inspection (except by the voter who had signed it), until the first business day after the election. Election materials of the SOS have been updated to reflect the change in timetable for inspecting applications for ballots by mail.
- HB 2477 expanded the number of languages that the SOS must provide on various state prescribed voter forms in the general election.
- HB 2817 was the elections omnibus bill. This bill made a number of small changes to the

TEC as well as a couple of substantive modifications. It added Section 18.068, requiring all counties in State and Federal elections to submit all of the voter history for that election within thirty days of the election. Minor issues have been reported with complying within such timeframe, yet all counties have successfully complied for both the primary and primary runoff election.

- HB 2920 authorized the city council of certain municipalities to adopt an ordinance to determine whether or not to stagger the election of its officers. No information is available on any such cities, which may have adopted such an ordinance.
- HB 2959 created a Class C misdemeanor for a county chair who fails to transfer records
  to the new county chair by the 30th day after the new chair's term of office begins. The
  Committee has no information regarding prosecutions, if any, under Section 171.028,
  TEC.
- SB 729 allowed a school district that uses cumulative voting to hold its elections with the junior college district, rather than the city, county, or state, if the school district so chooses. However, many school districts contract with counties to conduct a joint general election to satisfy joint election requirements. The change may prove helpful with respect to school districts that have general elections in May and in November of odd-numbered years when counties are unlikely to have elections. <sup>24</sup>

#### **ENDNOTES**

- <sup>1</sup> Keith Ingram, Texas Secretary of State, House Committee on Elections Public Hearing, September 26, 2012
- <sup>2</sup> Keith Ingram, Texas Secretary of State, House Committee on Elections Public Hearing, September 26, 2012
- <sup>4</sup> Keith Ingram, Texas Secretary of State, House Committee on Elections Public Hearing, September 26, 2012
- <sup>5</sup> Keith Ingram, Texas Secretary of State, House Committee on Elections Public Hearing, September 26, 2012
- <sup>6</sup> See Texas State Library and Archives Commission website:

https://www.tsl.state.tx.us/ref/abouttx/popcnty32010.html

- <sup>7</sup> Cheryl Johnson, Galveston County, House Committee on Elections Public Hearing, September 26, 2012
- <sup>8</sup> Cheryl Johnson, Galveston County, House Committee on Elections Public Hearing, September 26, 2012
- <sup>9</sup> Cheryl Johnson, Galveston County, House Committee on Elections Public Hearing, September 26, 2012
- <sup>10</sup> Cheryl Johnson, Galveston County, House Committee on Elections Public Hearing, September 26, 2012
- <sup>11</sup> Cheryl Johnson, Galveston County, House Committee on Elections Public Hearing, September 26, 2012
- <sup>12</sup> Keith Ingram, Texas Secretary of State, House Committee on Elections Public Hearing, September 26, 2012
- <sup>13</sup> House Research Organization, Texas House of Representatives, Focus Report, September 30, 2011
- <sup>14</sup> House Research Organization, Texas House of Representatives, Focus Report, September 30, 2011
- <sup>15</sup> Keith Ingram, Texas Secretary of State, House Committee on Elections and House Committee on Defense and Veterans' Affairs Joint Committee Hearing, October 9, 2012
- <sup>16</sup> Keith Ingram, Texas Secretary of State, House Committee on Elections and House Committee on Defense and Veterans' Affairs Joint Committee Hearing, October 9, 2012
- <sup>17</sup> Keith Ingram, Texas Secretary of State, House Committee on Elections and House Committee on Defense and Veterans' Affairs Joint Committee Hearing, October 9, 2012
- <sup>18</sup> Keith Ingram, Texas Secretary of State, House Committee on Elections and House Committee on Defense and Veterans' Affairs Joint Committee Hearing, October 9, 2012
- <sup>19</sup> Keith Ingram, Texas Secretary of State, House Committee on Elections and House Committee on Defense and Veterans' Affairs Joint Committee Hearing, October 9, 2012
- <sup>20</sup> Keith Ingram, Texas Secretary of State, House Committee on Elections and House Committee on Defense and Veterans' Affairs Joint Committee Hearing, October 9, 2012
- <sup>21</sup> Keith Ingram, Texas Secretary of State, House Committee on Elections and House Committee on Defense and Veterans' Affairs Joint Committee Hearing, October 9, 2012
- <sup>22</sup> Keith Ingram, Texas Secretary of State, House Committee on Elections Public Hearing, September 26, 2012
- <sup>23</sup> Keith Ingram, Texas Secretary of State, House Committee on Elections Public Hearing, September 26, 2012
- <sup>24</sup> Keith Ingram, Texas Secretary of State, House Committee on Elections Public Hearing, September 26, 2012