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2 MARKUP OF H.R. 1281, THE "DECEPTIVE

3 PRACTICES AND VOTER INTIMIDATION

4 PREVENTION ACT"

5 Thursday, March 29, 2007

6 House of Representatives,

7 Committee on the Judiciary,

8 Washington, D.C.

9 The committee met, pursuant to call, at 10:36 a.m., in Room  
10 2141, Rayburn House Office Building, Hon. John Conyers  
11 [chairman of the committee] presiding.

12 Present: Representatives Conyers, Scott, Lofgren,  
13 Jackson Lee, Waters, Delahunt, Wexler, Sanchez, Cohen,

14 Weiner, Schiff, Davis, Ellison, Smith, Coble, Goodlatte,  
15 Lungren, Cannon, Keller, Issa, Forbes, King, Feeney, Franks,  
16 and Jordan.

17       Staff present: Perry Apelbaum, General Counsel/Staff  
18 Director; Joseph Gibson, Minority Chief Counsel; and Anita  
19 Johnson, Clerk.

20 Chairman Conyers. [Presiding.] Good morning. The  
21 committee will come to order. Close the doors, please.

22 Pursuant to notice, I call up a bill, H.R. 1281, the  
23 "Deceptive Practices and Voter Intimidation Act of 2007," for  
24 purposes of markup.

25 The clerk will report the bill.

26 The Clerk. "H.R. 1281, a bill to amend Title 18, United  
27 States Code, to prohibit certain deceptive practices in  
28 federal elections and for other purposes. Be it enacted by  
29 the Senate and the House of Representatives of the United  
30 States of America and Congress assembled. Section 1, short  
31 title—"

32 [The bill follows:]

33 \*\*\*\*\* INSERT \*\*\*\*\*

34 Chairman Conyers. Without objection, the bill will be  
35 considered as read and open for amendment at any point.

36 But before I go further, I wanted to announce with  
37 Ranking Member Smith that we sadly have to announce the  
38 passing of Congressman Mel Watts' brother, which has caused  
39 him to return to North Carolina immediately, and we will be  
40 sending our condolences to Mel and his wife and family.

41 I will now give a brief description of the bill.

42 As I have said before, there is no more important issue  
43 that comes before this committee, this Congress or this  
44 nation than protecting the right to vote. Our democracy is  
45 premised on the notion of one person, one vote. It is the  
46 cornerstone right of our nation, what establishes us as the  
47 leader of the free world.

48 This committee has the responsibility to quash any  
49 attempts to thwart or otherwise erode any American's right to  
50 vote. And I know all of the members of the House Judiciary  
51 Committee take this matter very seriously.

52 We had a very successful hearing on March 7, protecting  
53 the right to vote, which served to further establish the fact  
54 that the right to vote is among our most precious. And  
55 without it, all the other rights and privileges that we enjoy  
56 would quickly become meaningless. Protecting the right to  
57 vote does not come cheaply or without continuing efforts.

58 Historically, it was not until the passage of the 1965

59 Voting Rights Act that we began to give the highest meaning  
60 to that right, and there has been a constant ebb and flow in  
61 our democracy surrounding this basic right.

62 We have endured a great deal of political and social  
63 abuses to protect it on behalf of the millions of Americans  
64 who were disenfranchised prior to the 19th century. We  
65 endured the early days of the Tammany Hall bosses and  
66 backroom smoke machines, and we endured the debacle of the  
67 Florida 2000 presidential election, to emerge as a nation  
68 where the right to vote belongs to every eligible American.

69 But the truth is we still have work to do, and if we are  
70 serious about protecting the right to vote, and I believe  
71 everybody here is, we will pass the election deception bill.

72 This is a measure that I consider a giant step in our  
73 efforts to reform the election process, though it is  
74 certainly not the whole complete solution. We also need to  
75 reduce our reliance on unverifiable electronic voting  
76 machines to restore for Americans their confidence of our  
77 elections and minimize the constant need for costly and  
78 burdensome recounts and challenges.

79 In each of the last three cycles, electronic voting  
80 machines, now used by 80 percent of the voters, have cost  
81 tens of thousands of votes with no means of accountability.  
82 That price is too high when the credibility of elections is  
83 impaired.

84           Additionally, we need to ensure a fair allocation of  
85 voting machines in polling places, as well as a unified  
86 system of educating those who work the polls.

87           Some argue that we need stronger voter identification  
88 requirements, but as was pointed out in today's Washington  
89 Post editorial, 11 percent of the voting age Americans  
90 disproportionately elder and minority voters, lack the  
91 necessary papers. Required documentation, such as  
92 naturalization paperwork, can cost as much as \$200.

93           I am convinced it is like a poll tax, really. I am  
94 convinced that we should make election day a national  
95 holiday, a belief that has been echoed by countless lawmakers  
96 and community leaders and members of this committee.

97           Let's face it, if we allow the infrastructure of our  
98 democracy to decay, our citizens will continue to lose faith  
99 in our abilities to legislate and to lead. We have seen this  
100 happen in some instances already. The very legitimacy of our  
101 democracy is really at stake, and this body has the  
102 responsibility for restoring not only its credibility but its  
103 reform.

104           It is long past time for federal legislation which will  
105 go a long way toward achieving this important ambition.

106           I am now pleased to recognize our friend, the ranking  
107 member from Texas, Mr. Lamar Smith.

108           Mr. Smith. Thank you, Mr. Chairman.

109 Mr. Chairman, I just want to mention that it is your and  
110 my understanding that we will make our opening statements  
111 while we await the arrival of members, particularly on this  
112 side of the dais from a meeting at the White House.

113 Chairman Conyers. Absolutely.

114 Mr. Smith. Okay. Thank you, Mr. Chairman.

115 This legislation provides that whoever "knowingly  
116 communicates false election-related information about that  
117 election with intent to prevent another person from  
118 exercising their right to vote in that election or attempts  
119 to do so shall be fined under this title or imprisoned not  
120 more than 5 years or both."

121 The National Voter Registration Act of 1993 requires  
122 that a person registering to vote affirm that they are a U.S.  
123 citizen. If a non-citizen signs or attempt to sign any form  
124 that can be used for voting purposes, including a voting  
125 registration form, and that form falsely states that they are  
126 a citizen when they are not a citizen, then that is a false  
127 statement.

128 The bill also specifically defines election-related  
129 information to include information regarding a voter's  
130 registration status or eligibility. If such a non-citizen  
131 who makes a false statement on a voting registration form is  
132 consequently allowed to vote and they vote for, say,  
133 Candidate Jones, they will necessarily negate the legitimate

134 vote of someone else who was a citizen and voted for, say,  
135 Candidate Smith.

136       If someone votes illegally and negates a legal voter's  
137 vote, the illegal vote has effectively denied the legal  
138 voter's right to vote. In the landmark case of Reynolds v.  
139 Sims, the Supreme Court stated, "The right of suffrage can be  
140 denied by a debasement or dilution of the weight of a  
141 citizen's vote just as effectively as by wholly prohibiting  
142 the free exercise of the franchise."

143       So an illegally voting non-citizen in that case would  
144 violate the clear terms of H.R. 1281 and be subject to up to  
145 5 years in jail.

146       The bill also provides that, "Immediately after  
147 receiving a report for the violation of the bill, the  
148 attorney general shall consider and review such report, and  
149 if the attorney general determines that there is a reasonable  
150 basis to find that a violation has occurred, the attorney  
151 general shall undertake all effective measures necessary to  
152 provide correct information voters affected by the false  
153 information."

154       All effective measures necessary to provide correct  
155 information to the voting public affected by illegal non-  
156 citizen voting certainly includes the creation of a  
157 citizenship registry that will ensure that only citizens can  
158 vote in federal elections. In the absence of a database that



159 ensures only citizens are voting, it would not be truthful to  
160 keep telling voters that their legal votes will be counted  
161 and not be negated by an illegally cast vote.

162 I am also glad to see this bill will punish those who  
163 vote in two different states in the same election. As the  
164 bipartisan Carter-Baker report on federal election reform,  
165 coauthored by former President Jimmy Carter and Secretary of  
166 State James Baker recently noted, "A substantial number of  
167 Americans are registered to vote in two different states."

168 According to news reports, Florida has more than 140,000  
169 voters who apparently are registered in four other states—  
170 Georgia, Ohio, New York and North Carolina.

171 Mr. Chairman, this includes almost 64,000 voters from  
172 New York city alone who are registered to vote in Florida as  
173 well. I know Mr. Weiner is not here, but he certainly might  
174 be tempted to campaign in Miami as a result of that figure.

175 Voting records of the 2000 election suggests that more  
176 than 2,000 people voted in more than one state. As Justice  
177 Marshall pointed out, the lack of proof of residence within a  
178 state disqualifies an otherwise eligible citizen from  
179 registering to vote.

180 Because one must show proof of residence in the states  
181 before one can register to vote, those who go to more than  
182 one state in the same federal election are clearly making a  
183 false statement on one of their voter registration forms,

184 since one cannot be a resident of two states at the same  
185 time. And those who illegally vote in more than one state  
186 deny legal voters their vote just as illegally voting non-  
187 citizens do.

188 Mr. Chairman, with these understandings in mind, I  
189 intend to offer an amendment or two to further improve the  
190 bill.

191 And I will yield back the balance of my time.

192 Chairman Conyers. Thank you, Mr. .Smith.

193 I ask unanimous consent to insert into the record, "The  
194 Myth of Voter Fraud," by The Washington Post of March 29.

195 [The article follows:]

196 \*\*\*\*\* INSERT \*\*\*\*\*

197 Chairman Conyers. And I invite our colleague, Jerry  
198 Nadler, chairman of the Constitution Committee, for any  
199 remarks he would choose to make at this time.

200 Mr. Nadler. Thank you, Mr. Chairman.

201 The right to vote and the right to cast an effective  
202 vote in a free and fair election is the fundamental pillar of  
203 any democratic country. It is the principle for which this  
204 nation has stood for over 200 years.

205 Throughout our history, we have often fallen short of  
206 the lofty principles embodied in our founding documents. We  
207 have progressed over time to extend that fundamental right of  
208 citizenship to all. In the last Congress, we extended the  
209 landmark Voting Rights Act for another 25 years.

210 There are still numerous threats to our democratic  
211 institution. Some threats come from the very governmental  
212 institutions charged with protecting the right to vote. Some  
213 come from electronic voting machines that seem to lose many  
214 votes. Some come from lawless individuals determined to win  
215 power at any cost. It is the job of this committee to  
216 protect the right to vote.

217 Recent hearings in this committee and in the  
218 Subcommittee of the Constitution, Civil Rights and Civil  
219 Liberties have brought to light not only some terrible abuses  
220 of the right to vote but the blatant failure of the Civil  
221 Rights Division of the Justice Department to enforce existing

222 legal protection.

223 I strongly support the legislation we are considering  
224 today, and I believe it is absolutely necessary to protect  
225 voters, especially voters in minority communities and voters  
226 with limited English language proficiency from the dirty  
227 tricks brought to light in our hearings.

228 I remain concerned, however, that the current political  
229 stranglehold this administration has over voting rights  
230 enforcement within the Civil Rights Division will continue to  
231 undermine our legislative efforts to protect voters. Whether  
232 it is this excellent legislation or the Voting Rights Act,  
233 which the members of this committee voted to reauthorize last  
234 year, only a vigorous non-political Civil Rights Division can  
235 ensure that these rights can be vindicated.

236 We can't legislate respect for the rule of law, which  
237 seems to be absent from the Justice Department these days,  
238 but we can legislate for the day when we have an  
239 administration ready to enforce the laws protecting the  
240 franchise, and we should do so today.

241 Let me make a comment on the remarks of my friend from  
242 Texas about the voter fraud and about the absurd evidence he  
243 cites for the prevalence of it. In today's editorial in The  
244 Washington Post that the chairman has read into the record,  
245 "The Myth of Voter Fraud," it talks about how this is largely  
246 a myth. But the gentleman from Texas talks about how

247 thousands of voters are registered in Florida who are also  
248 registered in New York and some other states and how this  
249 obviously is a fraud since you can't be registered in two  
250 places.

251       He obviously is not familiar with the practices of  
252 various boards of election. If you register in New York as a  
253 legal resident in the year 2000 and you vote there and you  
254 properly voter there and then in 2001 you move to Florida and  
255 you genuinely move to Florida and you register to vote in  
256 Florida, your registration will still be there in New York  
257 until they purge the rolls a few years later, usually, I  
258 think, 4 years later, even if you don't vote. If you don't  
259 vote for a few years, they automatically remove your name,  
260 but it will stay there for a few years.

261       Mr. Smith. Will the gentleman yield?

262       Mr. Nadler. In one moment. But you will technically be  
263 registered in two states. I would challenge anybody to show  
264 me any evidence of large numbers of people who in fact voted  
265 in New York and Florida.

266       I will yield.

267       Mr. Smith. Thank you. I do concede that that would  
268 explain some of the overlap in voter registration, but does  
269 the gentleman from New York have an explanation for the 2,000  
270 people who voted in two states?

271       Mr. Nadler. I think that is a myth. I think that is a

272 myth. I don't have it in front of me, but I do remember  
273 reading—

274 Mr. Smith. If the gentleman will yield again, that was  
275 a finding of the Carter-Baker commission, and I suspect—

276 Mr. Nadler. Reclaiming my time, the Carter-Baker  
277 commission was grossly mistaken in many of its findings and  
278 should not be given any credence in the area of voter fraud.

279 I yield back.

280 Chairman Conyers. I thank you.

281 Would anyone on the other side like to make an opening  
282 comment before I recognize Mr. Smith for his amendment?

283 Mr. Smith. Mr. Chairman, the ranking member of the  
284 relevant subcommittee is not yet present, and perhaps when he  
285 is available, he could be allowed to make an opening  
286 statement. But in his absence, I do have an amendment I  
287 would like to offer.

288 Chairman Conyers. All right. The clerk will report the  
289 amendment, the Smith amendment.

290 Mr. Smith. This is the 60-day amendment.

291 The Clerk. "Amendment to H.R. 1281, offered by Mr.  
292 Smith of Texas. Page 2, line 10, strike 'within 60 days.'"

293 [The amendment by Mr. Smith follows:]

294 \*\*\*\*\* INSERT \*\*\*\*\*

295 Chairman Conyers. The gentleman is recognized for 5  
296 minutes in support of his amendment.

297 Mr. Smith. Thank you, Mr. Chairman. I am going to make  
298 my statement in support of this amendment, but it is also my  
299 understanding that the chairman might be willing to accept  
300 the amendment as well.

301 Chairman Conyers. Absolutely.

302 Mr. Smith. Okay. Thank you, Mr. Chairman.

303 Chairman Conyers. I have looked it over, and it makes a  
304 lot of good sense to me.

305 Mr. Smith. Thank you. And I will be brief in my  
306 explanation of the amendment.

307 This amendment simply strikes the part of the bill that  
308 limits its prohibition on voting fraud to fraud committed  
309 within 60 days of a federal election. The types of voting  
310 fraud I have mentioned, illegal voting by non-citizens and  
311 illegal multiple voting in different states, can all occur  
312 when voting registration forms are filled out more than 60  
313 days before a federal election.

314 Nothing the Supreme Court has said indicates that there  
315 is any constitutional problem with prohibiting lying on  
316 voting registration forms at all times, not just 60 days  
317 before an election. Nor is there anything in Supreme Court  
318 precedence to indicate that Congress cannot regulate voting  
319 fraud, generally, whenever it occurs. Voting fraud is voting

320 fraud regardless of what page of the calendar it occurs on.

321 Mr. Chairman, I will ask unanimous consent to have the

322 rest of my statement be made a part of the record.

323 [The statement of Mr. Smith follows:]

324 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*



325 Chairman Conyers. And I thank the gentleman.

326 And I am pleased to accept the amendment offered by Mr.  
327 Smith, because it makes the bill stronger and more effective.  
328 This conduct of deceptive practices and voter intimidation  
329 will be prohibited year-round. We should not ever want  
330 voters to feel as if they can't cast a ballot, that they have  
331 been denied access to the political process.

332 Is there any other comment about the Smith amendment?

333 If not, all in favor, say, "Aye."

334 All opposed, say, "No."

335 Ayes have it, and so ordered, the amendment is accepted.

336 We hope that there will only be one other amendment to  
337 this measure.

338 Mr. Feeney. Mr. Chairman?

339 Chairman Conyers. Who seeks?

340 Mr. Feeney?

341 Mr. Feeney. I believe I have an amendment at the desk.

342 Mr. Smith. Would the gentleman yield just for a minute?

343 Mr. Feeney. I would be happy to.

344 Mr. Smith. I have an amendment I would like to offer on  
345 behalf of our colleague, Mr. Chabot. And if it is all right,  
346 I would like to offer that before the gentleman offers his  
347 amendment.

348 Mr. Feeney. In the meantime, we will distribute our  
349 amendment.

350 Mr. Smith. Okay.

351 Chairman Conyers. All right. Mr. Smith has asked his  
352 amendment be reported, the Smith-Chabot amendment.

353 The Clerk. "Amendment to H.R. 1281—"

354 Chairman Conyers. A point of order is reserved by the  
355 gentleman from New York.

356 The Clerk. "—offered by Mr. Chabot of Ohio and Mr.  
357 Smith of Texas. Page 2, line 13, insert 'effectively' before  
358 'exercising.'"

359 [The amendment by Mr. Smith and Mr. Chabot follows:]

360 \*\*\*\*\* INSERT \*\*\*\*\*

361 Chairman Conyers. Mr. Smith is recognized in support of  
362 his amendment.

363 Mr. Smith. Thank you, Mr. Chairman.

364 This amendment, which I am offering on behalf of Mr.  
365 Chabot, would simply add the word, "effectively," before the  
366 words, "exercising the right to vote," in the underlying  
367 legislation.

368 This is only fair. The right to vote means nothing if  
369 it cannot be effectively exercised, and the right to vote is  
370 not effectively exercised, for example, if illegal votes by  
371 non-citizens negate the votes of legal citizen voters.

372 In the landmark case of Reynolds v. Sims, the Supreme  
373 Court stated, "The right of suffrage can be denied by a  
374 debasement or dilution of the weight of a citizen's vote just  
375 as effectively as by wholly prohibiting the free exercise of  
376 the franchise."

377 And in Williams v. Rhodes, the Supreme Court struck down  
378 a law because it infringed on the right of qualified voters  
379 to cast their votes effectively.

380 We should codify in this legislation those very  
381 principles and in fact the exact word used by the Supreme  
382 Court.

383 Certainly, false election information imposes a, sort  
384 of, poll tax on deceived voters. And in the federal law  
385 prohibiting poll taxes, Congress stated it was prohibiting

386 such poll taxes because they imposed "hardship as a  
387 precondition to the exercise of the franchise," and, "because  
388 it has the purpose or effect of denying persons the right to  
389 vote."

390         How could anyone say this bill should not also prohibit  
391 people from effectively denying other people the right to  
392 vote?

393         I urge my colleagues to support Mr. Chabot's and my  
394 amendment.

395         [The statement of Mr. Smith follows:]

396 \*\*\*\*\* INSERT \*\*\*\*\*

397 Mr. Smith. I also ask unanimous consent to submit for  
398 the record a statement by Mr. Chabot in support of his  
399 amendment.

400 Chairman Conyers. Without objection, so ordered.

401 [The statement of Mr. Chabot follows:]

402 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

403 Chairman Conyers. I yield myself as much time as I need  
404 to respectfully oppose the amendment. It is a good effort,  
405 and perhaps we can continue discussing this after the hearing  
406 this morning. I appreciate Mr. Smith's effort to add clarity  
407 to the bill, but I am afraid this amendment would have the  
408 opposite effect.

409 By inserting the word, "effectively," it would add  
410 vagueness, creating constitutional due process questions in a  
411 criminal context and creating uncertainty about a wide  
412 variety of campaign conduct that probably should not be  
413 criminalized.

414 Our citizens should not have to guess at the meaning of  
415 this legislation. The measure before us is already  
416 appropriately focused, in my view, on the specific kinds of  
417 conduct that we have witnessed in recent elections and that  
418 clearly warrants criminal penalties. Our work in better  
419 securing the right to vote for all American citizens will  
420 continue, and I look forward to continuing to work with the  
421 gentleman on this matter.

422 Mr. Smith. Would the chairman yield?

423 Chairman Conyers. Absolutely.

424 Mr. Smith. Mr. Chairman, I thank you for your comments.

425 One of the reasons for offering this amendment is  
426 literally to make the legislation more effective, and I know  
427 that is a goal that you have as well. And I am hoping that

428 between now and the House floor you might consider whether or  
429 not to add that word when we have had a little bit more time  
430 to study it.

431       Furthermore, adding that word, "effectively"—that word,  
432 "effectively," is standard phraseology in many civil rights  
433 pieces of legislation.

434       So I think as we, perhaps, study the use of that word in  
435 the past and other pieces of legislation, study the use of  
436 the word as it has been used by the Supreme Court and in our  
437 joint desire to make this legislation as effective as  
438 possible, that I hope between now and the House floor you  
439 might further consider inserting it in the legislation.

440       Mr. Nadler. Mr. Chairman?

441       Chairman Conyers. The gentleman is very persuasive, and  
442 I am going to continue to look at it with him.

443       Mr. Smith. Thank you, Mr. Chairman.

444       Mr. Nadler. Mr. Chairman?

445       Chairman Conyers. I am pleased now to recognize Jerry  
446 Nadler of New York.

447       Mr. Nadler. Thank you.

448       I just want to point out that the word, "effectively,"  
449 is so vague. I mean, I think you are going to have to come  
450 up with something very different, because what you may be  
451 getting at here is the question of fraud. If so, you should  
452 say it and spell it out. The word, "effectively," could be

453 read as, "with intent to prevent another person from  
454 exercising effectively the right to vote."

455 Well, someone in the Justice Department had a political  
456 interference with the decisions on reapportionment, and is  
457 that now going to be a felonious interference with the  
458 effective right to vote?

459 Mr. Smith. Would the gentleman yield?

460 Mr. Nadler. All I am saying is that it is so vague you  
461 can read a lot into it. And if you are trying to get at  
462 something specific, it should be stated and considered on the  
463 merits.

464 I yield.

465 Mr. Smith. I thank the gentleman for yielding.

466 If the term is so vague, why has the Supreme Court  
467 itself used it as a term of art, and why is that word found  
468 so often—

469 Mr. Nadler. Reclaiming my time—

470 Mr. Smith. Just a minute—in civil rights legislation?

471 Mr. Nadler. Reclaiming my time, it may not be vague in  
472 different contexts. In this context, it is extraordinarily  
473 vague. I mean, there may be—I haven't read every civil  
474 rights statute, but given the context in which it is used, it  
475 may have a more precise meaning. In this context, it  
476 certainly doesn't have a precise meaning.

477 Mr. Smith. If the gentleman will yield one more time—



478 Mr. Nadler. Yes.

479 Mr. Smith. -I realize that the gentleman from New York  
480 has not had time to look at it within the context, but I am  
481 convinced by the legal arguments that I have put forth and by  
482 the legal arguments that the gentleman will read between now  
483 and the floor that he may not the concerns-

484 Mr. Nadler. I will be happy to read the arguments. We  
485 will see.

486 Mr. Smith. Okay.

487 Mr. Nadler. Mr. Chairman, I yield back.

488 Chairman Conyers. All right.

489 Who seeks recognition?

490 Peter King?

491 Mr. King. Mr. Chairman, I have an amendment at the  
492 desk.

493 Chairman Conyers. Wait a minute.

494 Mr. Davis. Mr. Chairman, I had a question on the-

495 Chairman Conyers. All right. Does anyone else want to  
496 speak on the amendment?

497 Okay. Artur Davis?

498 Mr. Davis. Thank you, Mr. Chairman.

499 I don't intend to take the whole time, Mr. Smith, but I  
500 wanted to ask you a question, and I will be happy to yield to  
501 you to answer it.

502 I am in Mr. Nadler's camp in that I frankly don't

503 understand what the word, "effectively," would do at all. It  
504 is obviously an intent-based provision of the statute. If  
505 someone has the intent to preclude someone from voting, they  
506 would seem to me to be liable, and I am not sure why the  
507 word, "exercise," needs to be modified. The intent is the  
508 relevant part of the statute, is it not?

509       And I will yield to you to answer that.

510       Mr. Smith. What was the last question you just asked?

511       Mr. Davis. It seems to me that intent is the most  
512 significant part of this particular clause. I am not sure  
513 why inserting, "effectively," before, "exercising," adds  
514 anything whatsoever.

515       And I will yield to you to answer that.

516       Mr. Smith. Okay. I thank the gentleman for yielding.

517       Someone could certainly—and I agree with what the  
518 gentleman said about intent, but someone could have an intent  
519 to effectively deny someone the right to vote, for example.  
520 As I mentioned awhile ago, in the context we have looked at  
521 it, effective is a word that was appropriately used in the  
522 various civil rights pieces of legislation and by the Supreme  
523 Court, and I am willing for the gentleman to look at that and  
524 look at the legal—

525       Mr. Davis. Well, just reclaiming my time, I mean, that  
526 point the ranking member has made. If someone has the intent  
527 to prevent someone else from voting, how would your addition

528 of the word, "effectively," alter that person's liability?

529 Mr. Smith. If the gentleman would yield, I think it  
530 will help in the definition and in the actual prosecution of  
531 crimes since that is a word that has been used and associated  
532 with similar types of—

533 Mr. Davis. How does it modify the intent?

534 Mr. Smith. I think it adds teeth to it.

535 Mr. Davis. Well, I will yield back my time, because I  
536 am not sure we are going to solve this today, but I would  
537 side with the gentleman from New York. If there is an intent  
538 to prevent someone from voting, someone is liable, and I  
539 don't see what the additive adds beyond a point of confusion  
540 to the statute, but I will yield back.

541 Mr. Ellison. Mr. Chair?

542 Chairman Conyers. The gentleman from Minnesota seeks  
543 recognition.

544 Mr. Ellison. Very briefly, Mr. Chair.

545 I think that the ranking member is right. This term,  
546 "effects," is used in civil rights statutes but not within  
547 the context he is referring to.

548 Generally speaking, when you are talking about voting  
549 rights legislation, if a dilution scheme or a reapportionment  
550 scheme or some effort to either annex or de-annex a part of  
551 an area, it would have the effect of diminishing someone's  
552 right to vote. Regardless as to the intent, that could

553 constitute a violation of the statute.

554       So, really, intent-based statutes and effects-based  
555 statutes are, sort of, juxtaposed and divided. You have to,  
556 kind of, pick one or the other but to try to put in one  
557 statute the intent and effects would, sort of, undermine what  
558 the whole idea of an effects-based statute is.

559       Also, in the employment context. If there is a statute  
560 or an action that would have an effect of diminishing  
561 somebody's right, then there are some context in which there  
562 is a basis for action.

563       And let me just add this, as I wrap up, and I thank the  
564 chairman for allowing me to speak. I know he wants to move  
565 forward, but I just wanted to ask the ranking member a  
566 question regarding the statute.

567       Is it the ranking member's intent or does the ranking  
568 member envision a prosecution on the basis of this statute,  
569 should it become law, if somebody votes who, in the case that  
570 you mentioned before, somebody votes in a state where they  
571 are not legally entitled to vote? Would you envision that  
572 someone be prosecuted under this statute because that person  
573 has, to use your term, effectively negated or debased someone  
574 else's voting?

575       Mr. Smith. If the gentleman from Minnesota will yield,  
576 I will try to be brief.

577       Mr. Ellison. Okay. I will yield to the gentleman from

578 Alabama first.

579       Mr. Davis. I thank the gentleman for yielding to  
580 bolster his point, because I think this is exactly a good  
581 question for the ranking member.

582       Mr. Smith, I will happily yield to you to answer this.

583       Hypothetically, if someone living in the state of  
584 California were to send a flyer into an Hispanic community  
585 and were to suggest to anyone in the Hispanic community that  
586 you couldn't vote if you had a pending collection against  
587 you, let's say that someone in that community received it and  
588 wasn't eligible to vote for some other reason.

589       Clearly, the information that is disseminated would seem  
590 to me to make someone liable. They would have the intent of  
591 preventing someone from exercising a right to vote, although  
592 some of the recipients of the letter may not be entitled to  
593 exercise their right.

594       Would you agree that that person would still be liable  
595 even if the receipt of the improper message couldn't vote  
596 legally?

597       Mr. Smith. If the gentleman from Minnesota will yield,  
598 I will try to respond to a couple of points that have been  
599 made.

600       Yes, I would expect that that would be the case, and I  
601 would expect that that would be the intent of the author of  
602 the legislation itself. As far as the context question that

603 has now been raised a couple of time, I don't understand why  
604 the context here is any different than other voting rights  
605 pieces of legislation. We recently passed the Voting Rights  
606 Reauthorization Act. That legislation itself contained the  
607 word, "effectively." So, if anything, we are just trying to  
608 make things parallel and consistent.

609       And I have enough confidence in both gentlemen's  
610 intelligence and legal acumen that if they will take a look  
611 at this further between now and the floor, they might come to  
612 the same conclusion. If not, I would respect their right to  
613 disagree, but I do think there is more to be learned about  
614 the context.

615       Chairman Conyers. The gentleman yields back his time.

616       We have been summoned to the House floor for a vote, and  
617 so the committee will take a short recess and reconvene  
618 promptly after our vote.

619       The committee stands in recess.

620       [Recess.]

621       Chairman Conyers. The committee will come to order.

622       The chair recognizes Artur Davis for a few minutes—

623       Mr. Davis. Thank you, Mr. Chairman.

624       Chairman Conyers. —on the amendment before us.

625       Mr. Davis. Mr. Chairman, I know you are trying to move  
626 along, so I will be brief, but because I think this is an  
627 important conversation, I wanted to clarify the colloquy Mr.

628 Smith and I were having.

629       The principal concern with Mr. Smith's amendment, the  
630 ranking member's amendment, is that I believe it would shift  
631 that focus of prosecution from the intent to the effect of  
632 the wrongful action. As the bill is currently drafted, it  
633 would make a wrongful intent a basis for criminal liability.  
634 So if I sought to prevent someone from voting, even if the  
635 person wasn't eligible to vote, I would still be liable  
636 because of my bad intent. That is a deliberate choice, I  
637 believe, by the framers of this bill.

638       The effect of the ranking member's amendment would be to  
639 shift the focus of liability from intent to the effect, so in  
640 conclusion, someone who was prosecuted under this statute, if  
641 Mr. Smith's amendment were to be included, would have the  
642 affirmative defense that, well, the person wasn't eligible to  
643 vote anyway. I think it would complicate these cases  
644 dramatically and would add a major new element of  
645 uncertainty.

646       As one of the co-sponsors of the bill, I think it is not  
647 what was intended, and I will thank the chair and yield back.

648       Chairman Conyers. I thank the gentleman's contribution.

649       Mr. Goodlatte. Mr. Chairman?

650       Chairman Conyers. Yes, Mr. Goodlatte?

651       Mr. Goodlatte. In Mr. Smith's absence and being fully  
652 engaged, let me just convey that I think a person can intend

653 to effectively deny someone's right to vote. If someone  
654 purposely encourages illegal voters to vote and those illegal  
655 voters negate legal votes, then there is a bad intent to deny  
656 someone the effectiveness of their vote.

657 Chairman Conyers. I thank the gentleman and yield  
658 briefly to Sheila Jackson Lee from Texas.

659 Ms. Jackson Lee. Thank you very much, Mr. Chairman. I  
660 am very, very delighted that you are moving on this crucial  
661 legislation.

662 I am reminded of the intimidation just a few years ago  
663 in Florida. I don't know how many voters were effectively  
664 not able to vote, but I do know, realistically, many Florida  
665 A&M students were not able to vote and law-abiding citizens  
666 were not able to vote when they sent out the word that felons  
667 were en masse voting.

668 A Washington Post article, which I would ask unanimous  
669 consent to submit to the record if it has not already—

670 Chairman Conyers. Without objection.

671 Ms. Jackson Lee. —makes the very, I think, lucid point  
672 that allegations of voter fraud, such as people sneaking into  
673 the polls, have been pushed in recent years by partisans  
674 seeking to justify proof of citizenship and other restrictive  
675 ID requirements that have been declared unconstitutional by  
676 the Georgia state court.

677 I think we dream of more fraud than actually exists. I



678 think the question of effectively being denied is a strawman  
679 that keeps this legislation in shackles, and, frankly, I  
680 believe everyone should want to have the right kind of  
681 information being disseminated to all voters so that they are  
682 not, in essence, rejected or intimidated from going to the  
683 polls. That is the underlying basis of this bill, deceptive  
684 practices that en mass will keep large numbers of people from  
685 voting.

686         And the activities that occurred in Florida and other  
687 places, such as the election day is on Saturday rather than  
688 Tuesday in certain communities, the idea that polling places  
689 have been relocated and they actually have not been  
690 relocated, the whole idea of felons being arrested or African  
691 American males being arrested as they go to the polls, all of  
692 those are efforts that I think what is the underlying premise  
693 of this bill.

694         Voter fraud is one that all of us can enthusiastically  
695 advocate that should be stamped out, but it should not be, if  
696 you will, the reason for an amendment that undermines the  
697 essence of this legislation with the terminology,  
698 "effective," because, in essence, you are talking about a  
699 small issue for a large question of protecting people from  
700 deceptive election practices.

701         I would hope that my colleagues would consider the  
702 purpose of this bill and join all of us in supporting it and

703 defeating this amendment.

704 Mr. Chairman, might I just also indicate that the  
705 Washington state becomes an example. A challenge to  
706 ostensibly non-citizen voters who was lodged in April 2005 on  
707 the questionable basis of foreign-sounding names, but after  
708 an election there last year in which more than 2 million  
709 votes were cast following much controversy, only one ballot  
710 ended up under suspicion for double voting.

711 So fraud, Mr. Chairman, is, again, blown up strawman but  
712 non-existent, but deceptive practices need our support. I  
713 ask my colleagues to defeat this amendment.

714 I yield back.

715 Chairman Conyers. The chair calls for a vote on the  
716 Smith-Chabot amendment. The question is on the amendment.

717 All those in favor, signify by saying, "Aye."

718 All those opposed, signify by saying, "No."

719 In the opinion of the chair, the noes appear to have it.

720 Mr. Smith. Mr. Chairman, I would ask for a recorded  
721 vote.

722 Chairman Conyers. A recorded vote is requested.

723 All of those who support the amendment when their name  
724 is called will indicate by saying, "Aye." All those opposed  
725 will say, "No."

726 The clerk will call the roll.

727 The Clerk. Mr. Chairman?

728 Chairman Conyers. No.

729 The Clerk. Mr. Chairman votes no.

730 Mr. Berman?

731 [No response.]

732 Mr. Boucher?

733 [No response.]

734 Mr. Nadler?

735 Mr. Nadler. No.

736 The Clerk. Mr. Nadler votes no.

737 Mr. Scott?

738 Mr. Scott. No.

739 The Clerk. Mr. Scott votes no.

740 Mr. Watt?

741 [No response.]

742 Ms. Lofgren?

743 [No response.]

744 Ms. Jackson Lee?

745 Ms. Jackson Lee. Contrary to my mistaken voice vote, I

746 am voting, no.

747 The Clerk. Ms. Jackson Lee votes no.

748 Ms. Waters?

749 Ms. Waters. No.

750 The Clerk. Ms. Waters votes no.

751 Mr. Meehan?

752 [No response.]

753 Mr. Delahunt?  
754 [No response.]  
755 Mr. Wexler?  
756 [No response.]  
757 Ms. Sanchez?  
758 Ms. Sanchez. No.  
759 The Clerk. Ms. Sanchez votes no.  
760 Mr. Cohen?  
761 [No response.]  
762 Mr. Johnson?  
763 Mr. Johnson. No.  
764 The Clerk. Mr. Johnson votes no.  
765 Mr. Gutierrez?  
766 [No response.]  
767 Mr. Sherman?  
768 [No response.]  
769 Mr. Weiner?  
770 Mr. Weiner. No.  
771 The Clerk. Mr. Weiner votes no.  
772 Mr. Schiff?  
773 [No response.]  
774 Mr. Davis?  
775 Mr. Davis. No.  
776 The Clerk. Mr. Davis votes no.  
777 Ms. Wasserman Schultz?

778 [No response.]  
779 Mr. Ellison?  
780 [No response.]  
781 Mr. Smith?  
782 [No response.]  
783 Mr. Sensenbrenner?  
784 [No response.]  
785 Mr. Coble?  
786 Mr. Coble. Aye.  
787 The Clerk. Mr. Coble votes aye.  
788 Mr. Gallegly?  
789 [No response.]  
790 Mr. Goodlatte?  
791 Mr. Goodlatte. Aye.  
792 The Clerk. Mr. Goodlatte votes aye.  
793 Mr. Chabot?  
794 [No response.]  
795 Mr. Lungren?  
796 [No response.]  
797 Mr. Cannon?  
798 Mr. Cannon. Aye.  
799 The Clerk. Mr. Cannon votes aye.  
800 Mr. Keller?  
801 Mr. Keller. Aye.  
802 The Clerk. Mr. Keller votes aye.

803 Mr. Issa?

804 [No response.]

805 Mr. Pence?

806 [No response.]

807 Mr. Forbes?

808 Mr. Forbes. Aye.

809 The Clerk. Mr. Forbes votes aye.

810 Mr. King?

811 Mr. King. Aye.

812 The Clerk. Mr. King votes aye.

813 Mr. Feeney?

814 Mr. Feeney. Aye.

815 The Clerk. Mr. Feeney votes aye.

816 Mr. Franks?

817 [No response.]

818 Mr. Gohmert?

819 [No response.]

820 Mr. Jordan?

821 Mr. Jordan. Aye.

822 The Clerk. Mr. Jordan votes aye.

823 Chairman Conyers. Are there other members that wish to

824 vote?

825 Mr. Sherman?

826 Mr. Sherman. No.

827 The Clerk. Mr. Sherman votes no.

828 Chairman Conyers. Mr. Berman?

829 Mr. Berman. No.

830 The Clerk. Mr. Berman votes no.

831 Chairman Conyers. Mr. Delahunt?

832 Mr. Delahunt. No.

833 The Clerk. Mr. Delahunt votes no.

834 Chairman Conyers. Mr. Issa?

835 Mr. Issa. Aye.

836 The Clerk. Mr. Issa votes aye.

837 Chairman Conyers. Ms. Lofgren?

838 Ms. Lofgren. No.

839 The Clerk. Ms. Lofgren votes no.

840 Chairman Conyers. Mr. Schiff?

841 Mr. Schiff. No.

842 The Clerk. Mr. Schiff votes no.

843 Chairman Conyers. Mr. Wexler?

844 Mr. Wexler. No.

845 The Clerk. Mr. Wexler votes no.

846 Chairman Conyers. Mr. Cohen?

847 Mr. Cohen. No.

848 The Clerk. Mr. Cohen votes no.

849 Chairman Conyers. Are there any others that choose to  
850 cast a vote on this amendment?

851 Mr. Ellison?

852 Mr. Ellison. No.

853 The Clerk. Mr. Ellison votes no.

854 Chairman Conyers. The clerk will report.

855 The Clerk. Mr. Chairman, there are nine members voting  
856 aye and 17 members voting no.

857 Chairman Conyers. The amendment fails.

858 If there are no other amendments—

859 Mr. Forbes. Mr. Chairman? Mr. Chairman?

860 Chairman Conyers. Yes. Yes.

861 Mr. Forbes. Mr. Chairman, I have an amendment at the  
862 desk.

863 Chairman Conyers. The gentleman's amendment will be  
864 reported—Mr. Forbes.

865 Mr. Nadler. Mr. Chairman, reserving the right to  
866 object.

867 Chairman Conyers. All right.

868 The clerk will—

869 Mr. Nadler. I was reserving a point of order.

870 Chairman Conyers. Yes. The gentleman from New York  
871 reserves a point of order.

872 Mr. Forbes's amendment, the clerk will read.

873 The Clerk. "Amendment to H.R. 1281, offered by Mr.  
874 Forbes of Virginia. Page 2, after line 15, insert the  
875 following: (b) If the offense results in voting in a federal  
876 election by more than 10 persons who are not citizens of the  
877 United States, the offender shall be fined under this title



878 or imprisoned not more than 10 years, or both. Page 2, line  
879 16, strike '(b)' and insert '(c).'"

880 [The amendment by Mr. Forbes follows:]

881 \*\*\*\*\* INSERT \*\*\*\*\*

882 Chairman Conyers. The amendment will be considered as  
883 read, and the gentleman—

884 Mr. Nadler. Mr. Chairman?

885 Chairman Conyers. —Mr. Forbes, will be recognized—let  
886 Mr. Forbes go first.

887 Mr. Forbes. Thank you. Mr. Chairman, I move to strike  
888 the last word.

889 Chairman Conyers. Without objection, the gentleman is  
890 recognized for 5 minutes.

891 Mr. Forbes. Thank you, Mr. Chairman.

892 Mr. Chairman, this amendment raises the maximum penalty  
893 for deceptive federal election practices to help deter the  
894 serious problem of illegal non-citizen voting. The right to  
895 vote is one of the most precious rights we, as U.S. citizens,  
896 possess. When a non-citizen votes in a federal election, he  
897 or she, by definition, prevents a U.S. citizen from voting.

898 As discussed at the hearing on the bill, the plain  
899 meaning of the text would punish non-citizens registering to  
900 vote in federal elections, as that would constitute  
901 communicating false election information when the voter  
902 registration form asserts that the individual filing it is a  
903 U.S. citizen. The fact that the non-citizen intends to vote  
904 would, by definition, constitute the required intent to  
905 deprive another person from exercising the right to vote in  
906 that election.

907           However, this amendment addresses an even more egregious  
908 form of voter fraud. Specifically, this amendment is meant  
909 to address the situation where an individual communicates  
910 false election information which causes 10 or more non-  
911 citizens to vote in a federal election. We should simply not  
912 tolerate an individual committing election fraud in order to  
913 allow non-citizens to vote.

914           Voting by non-citizens is not uncommon. The House  
915 Administration Committee's investigation in one election  
916 found evidence of 748 improper ballots, 624 by immigrants who  
917 were not citizens when they registered to vote. Furthermore,  
918 there was at least one incident of a candidate communicating  
919 false election information during the last congressional  
920 campaign season to encourage non-citizens to vote.

921           To discourage this type of behavior and to protect the  
922 value of U.S. citizens' votes, my amendment raises the  
923 potential penalty from a maximum of 5 years imprisonment to a  
924 maximum of 10 years imprisonment when the violation results  
925 in more than 10 non-citizens voting in a federal election.

926           I encourage the members of the committee to support this  
927 amendment and ensure that each U.S. citizen's vote counts.

928           Thank you, Mr. Chairman, and I yield back.

929           Chairman Conyers. I thank the gentleman.

930           Does the gentleman from New York insist upon his  
931 reservation?

932 Mr. Nadler. Yes, I do insist upon this reservation.

933 Chairman Conyers. Then he is recognized.

934 Mr. Nadler. The amendment is clearly not germane to the  
935 bill. The bill deals with communicating false election  
936 information with regard to the date of an election or the  
937 qualification of a voter or someone telling a voter, "If you  
938 are an immigrant, you can't vote." It does not deal with the  
939 subject matter the amendment deals with, which is someone who  
940 votes who has no right to vote.

941 The bill deals with discouraging someone from voting by  
942 telling them it is the wrong date or by telling them some  
943 wrong information about the election. It is completely not  
944 germane. What the amendment does is to increase the penalty  
945 for something that is already a crime that is not within the  
946 scope of this bill.

947 Chairman Conyers. I thank the gentleman.

948 Does anyone else want to speak to the point of non-  
949 germaneness on the amendment?

950 If not, the chair—

951 Mr. Goodlatte. Mr. Speaker?

952 Chairman Conyers. Yes, Mr. Goodlatte?

953 Mr. Goodlatte. Mr. Chairman, I think this amendment is  
954 clearly germane. The fact of the matter is, the language  
955 that is offered is language that is in the context of the  
956 language that is placed in the amendment before you, in the

957 legislation before you. And there may be a difference of  
958 opinion about what actually constitutes intent to deprive  
959 someone of the right to vote, but I think this amendment  
960 speaks for itself on that issue, and it is up to the future  
961 determinations of the courts and so on exactly how the  
962 language that we would pass through this body applies.

963 But in terms of the relationship of what you have before  
964 you in terms of the legislation and what you have before you  
965 in the form of this amendment, the amendment is germane to  
966 the legislation.

967 Chairman Conyers. I thank the gentleman from Virginia.

968 The chair would observe that the gentleman from  
969 Virginia, Mr. Forbes's amendment is attached to a bill that  
970 deals with prohibiting conduct that prevents someone from  
971 exercising the right to vote, but the Forbes amendment deals  
972 with conduct that constitutes voting when there is no right  
973 to do so.

974 And so the chair is prepared to rule on the point of  
975 order. The amendment is not germane to the bill, as it deals  
976 with a different subject matter and purpose.

977 Are there any further amendments?

978 Mr. Forbes. Mr. Chairman?

979 Chairman Conyers. Yes, the gentleman from—

980 Mr. Forbes. I would like to challenge the ruling of the  
981 chair.

982 Mr. Weiner. Mr. Chairman, I make a motion to table the  
983 motion.

984 Chairman Conyers. The amendment is challenged, and  
985 there is a motion to table the motion.

986 All those in favor of the motion to table, signify by  
987 saying, "Aye."

988 And those opposed, signify by saying, "No."

989 In the opinion of the chair, the ayes have it.

990 Mr. Forbes. Roll call, Mr. Chairman.

991 Chairman Conyers. Roll call is requested. The clerk  
992 will call the roll.

993 The Clerk. Mr. Chairman?

994 Chairman Conyers. Aye.

995 The Clerk. Mr. Chairman votes aye.

996 Mr. Berman?

997 [No response.]

998 The Clerk. Mr. Boucher?

999 [No response.]

1000 Mr. Nadler?

1001 Mr. Nadler. Aye.

1002 The Clerk. Mr. Nadler votes aye.

1003 Mr. Scott?

1004 Mr. Scott. Aye.

1005 The Clerk. Mr. Scott votes aye.

1006 Mr. Watt?

1007 [No response.]

1008 Ms. Lofgren?

1009 Ms. Lofgren. Aye.

1010 The Clerk. Ms. Lofgren votes aye.

1011 Ms. Jackson Lee?

1012 Ms. Jackson Lee. Aye.

1013 The Clerk. Ms. Jackson Lee votes aye.

1014 Ms. Waters?

1015 Ms. Waters. Aye.

1016 The Clerk. Ms. Waters votes aye.

1017 Mr. Meehan?

1018 [No response.]

1019 Mr. Delahunt?

1020 [No response.]

1021 Mr. Wexler?

1022 [No response.]

1023 Ms. Sanchez?

1024 Ms. Sanchez. Aye.

1025 The Clerk. Ms. Sanchez votes aye.

1026 Mr. Cohen?

1027 Mr. Cohen. Aye.

1028 The Clerk. Mr. Cohen votes aye.

1029 Mr. Johnson?

1030 [No response.]

1031 Mr. Gutierrez?

1032 [No response.]

1033 Mr. Sherman?

1034 [No response.]

1035 Mr. Weiner?

1036 Mr. Weiner. Aye.

1037 The Clerk. Mr. Weiner votes aye.

1038 Mr. Schiff?

1039 Mr. Schiff. Aye.

1040 The Clerk. Mr. Schiff votes aye.

1041 Mr. Davis?

1042 Mr. Davis. Aye.

1043 The Clerk. Mr. Davis votes aye.

1044 Ms. Wasserman Schultz?

1045 [No response.]

1046 Mr. Ellison?

1047 Mr. Ellison. Aye.

1048 The Clerk. Mr. Ellison votes aye.

1049 Mr. Smith?

1050 [No response.]

1051 Mr. Sensenbrenner?

1052 [No response.]

1053 Mr. Coble?

1054 Mr. Coble. No.

1055 The Clerk. Mr. Coble votes no.

1056 Mr. Gallegly?



1057 [No response.]  
1058 Mr. Goodlatte?  
1059 Mr. Goodlatte. No.  
1060 The Clerk. Mr. Goodlatte votes no.  
1061 Mr. Chabot?  
1062 [No response.]  
1063 Mr. Lungren?  
1064 Mr. Lungren. No.  
1065 The Clerk. Mr. Lungren votes no.  
1066 Mr. Cannon?  
1067 [No response.]  
1068 Mr. Keller?  
1069 Mr. Keller. No.  
1070 The Clerk. Mr. Keller votes no.  
1071 Mr. Issa?  
1072 Mr. Issa. No.  
1073 The Clerk. Mr. Issa votes no.  
1074 Mr. Pence?  
1075 [No response.]  
1076 Mr. Forbes?  
1077 Mr. Forbes. No.  
1078 The Clerk. Mr. Forbes votes no.  
1079 Mr. King?  
1080 Mr. King. No.  
1081 The Clerk. Mr. King votes no.

1082 Mr. Feeney?

1083 Mr. Feeney. No.

1084 The Clerk. Mr. Feeney votes no.

1085 Mr. Franks?

1086 Mr. Franks. No.

1087 The Clerk. Mr. Franks votes no.

1088 Mr. Gohmert?

1089 [No response.]

1090 Mr. Jordan?

1091 Mr. Jordan. No.

1092 The Clerk. Mr. Jordan votes no.

1093 Chairman Conyers. Are there members that have not  
1094 voted?

1095 Mr. Berman?

1096 Mr. Berman. Aye.

1097 The Clerk. Mr. Berman votes aye.

1098 Ms. Jackson Lee. Mr. Chairman?

1099 Chairman Conyers. Who is calling?

1100 Ms. Jackson Lee?

1101 Ms. Jackson Lee. How am I recorded?

1102 The Clerk. Ms. Jackson Lee votes aye.

1103 Ms. Jackson Lee. Thank you.

1104 Mr. Nadler. Mr. Chairman?

1105 Chairman Conyers. Mr. Nadler?

1106 Mr. Nadler. Have I been recorded?

1107 Chairman Conyers. I have no idea.

1108 The Clerk. Mr. Nadler votes aye.

1109 Mr. Nadler. That wasn't my question. I asked if I was  
1110 recorded.

1111 The Clerk. Yes, Mr. Nadler.

1112 Mr. Nadler. Thank you. Now, could I inquire how I was  
1113 recorded?

1114 The Clerk. Mr. Nadler, I have you voting aye.

1115 Mr. Nadler. Thank you very much.

1116 Ms. Sanchez. Mr. Chairman?

1117 Chairman Conyers. Ms. Sanchez?

1118 Ms. Sanchez. How am I recorded?

1119 The Clerk. Ms. Sanchez, I have you voting aye.

1120 Chairman Conyers. The clerk will report.

1121 Mr. Weiner. Mr. Chairman, request unanimous consent to  
1122 change my vote.

1123 How am I recorded?

1124 The Clerk. Mr. Weiner, I have you voting aye.

1125 Mr. Weiner. Mr. Chairman, that is fine.

1126 Chairman Conyers. The clerk will report.

1127 The Clerk. Mr. Chairman, I have 13 members voting aye  
1128 and 10 members voting nay.

1129 Chairman Conyers. The point of non-germaneness applies.

1130 Are there other amendments?

1131 Mr. Feeney. Mr. Chairman?

1132 Chairman Conyers. Yes.

1133 Mr. Feeney. I have an amendment at the desk.

1134 Chairman Conyers. The gentleman from Florida, Mr.

1135 Feeney?

1136 Mr. Nadler. Mr. Chairman, I reserve a point of order at  
1137 this point.

1138 Chairman Conyers. A point of order is reserved by the  
1139 gentleman from New York.

1140 The clerk will report.

1141 The Clerk. "Amendment to H.R. 1281, offered by Mr.

1142 Feeney of Florida. Page 2, after line 15—"

1143 [The amendment by Mr. Feeney follows:]

1144 \*\*\*\*\* INSERT \*\*\*\*\*

1145 Mr. Feeney. Mr. Chairman, request unanimous consent the  
1146 amendment be considered as read.

1147 Chairman Conyers. Without objection. The gentleman is  
1148 recognized for 5 minutes.

1149 Mr. Feeney. Mr. Chairman, what this amendment does, in  
1150 order to preserve and protect a clean elections process, is  
1151 to make it clear that knowingly communicating false election-  
1152 related information, including not presenting an  
1153 identification consistent with the REAL ID Act would be a  
1154 violation of the bill that we are considering.

1155 I would point out that while Mr. Nadler doesn't like the  
1156 recommendations of the bipartisan Carter-Baker commission-

1157 Mr. Nadler. Mr. Chairman, point of order.

1158 Mr. Feeney. With all due respect, I think-

1159 Mr. Nadler. No. My point of order is that I can't hear  
1160 the gentleman.

1161 Mr. Feeney. Can you hear me now?

1162 Mr. Nadler. Yes, I can.

1163 Mr. Feeney. The gentleman from New York had concerns  
1164 about the Carter-Baker bipartisan commission on elections,  
1165 but a lot of us think that there was a lot of common sense  
1166 and some good reporting in that report.

1167 One of the things they recommended is requiring an  
1168 identification consistent with the REAL ID Act as what they  
1169 called a logical vehicle to make sure that we have secure

1170 voting identification in this country.

1171       There have been myriad examples of testimony in this  
1172 committee and the House Administration Committee of illegal  
1173 aliens, for example, obtaining a voter registration  
1174 successfully, of voting illegally.

1175       We had testimony regarding the Utah legislator, auditor  
1176 general's report that some 400 have used illegal licenses to  
1177 register to vote in Utah illegally. Some 14 have been found  
1178 to have actually voted illegally. We do not know how many  
1179 others. That is just one of many myriad examples.

1180       And, Mr. Chairman, because it would be improper to  
1181 recognize me again, I guess I will go straight to the  
1182 germanity issue that I suspect Mr. Nadler will raise.

1183       In the case of Reynolds v. Sims, the U.S. Supreme Court  
1184 stated that the right of suffrage can be denied by a  
1185 debasement of dilution of the weight of a citizen's vote just  
1186 as effectively as by wholly prohibiting the free exercise of  
1187 that franchise.

1188       Mr. Chairman, what I would suggest to you is that the  
1189 Reynolds v. Sims federal court has already issued an opinion  
1190 on the germanity of people not eligible to vote diluting  
1191 votes.

1192       They say it is the same thing as standing in the voting  
1193 booth and saying "no." We have got a federal ruling on the  
1194 germanity issue with respect to my amendment.

1195           Canceling out a legitimate vote has the same exact  
1196 effect as intimidating voters illegally keeping them out of  
1197 the ballot box.

1198           If this committee is going to vote on a of germanity to  
1199 overturn the Reynolds v. Sims decision and if we are going to  
1200 allow, say, a million people to vote in a local city council  
1201 race and say it didn't affect the race, same way as keeping  
1202 legitimate votes out, I think we have got to deal squarely  
1203 with the fact that the United States Supreme Court has  
1204 already told us that the two are equivalent. They are  
1205 exactly the same.

1206           And so with that, Mr. Chairman, anticipating, if the  
1207 gentleman from New York is going to raise this germanity  
1208 point, I think we ought to have a debate.

1209           Is the Supreme Court right? Is diluting the vote  
1210 illegally the same as stopping a legal voter from casting his  
1211 vote?

1212           We ought to have that debate right here and now on the  
1213 issue of germanity.

1214           With that, I would yield back the balance of my time.

1215           Chairman Conyers. I thank the gentleman for  
1216 anticipating a reservation on the part of the gentleman from  
1217 New York.

1218           Mr. Nadler. Mr. Chairman?

1219           Chairman Conyers. The gentleman from New York?

1220 Mr. Nadler. Thank you.

1221 Mr. Chairman, I insist on my point of order with respect  
1222 to the germaneness, not the germanity, but the germaneness of  
1223 the amendment.

1224 The amendment is clearly not germane. It introduces an  
1225 entirely new subject matter into this bill. The bill does  
1226 not deal with forms of identification for voting. Arguably,  
1227 without getting into the merits, maybe some bill should, but  
1228 this bill does not, and, therefore, the amendment is not  
1229 germane.

1230 Mr. Goodlatte. Mr. Chairman, may I be heard on the  
1231 issue?

1232 Chairman Conyers. Of course, Mr. Goodlatte.

1233 Mr. Goodlatte. Thank you, Mr. Chairman.

1234 I believe that the United States Supreme Court has ruled  
1235 that allowing people to vote who are not entitled to vote has  
1236 the effect of the dilution of the vote, which, in turn,  
1237 causes the lawful registered voters who vote in election to  
1238 be effectively denied their right to vote.

1239 If someone votes illegally and negates a legal voter's  
1240 vote, the illegal vote has effectively denied the legal  
1241 voter's right to vote.

1242 In the landmark case of Reynolds v. Sims, which I know  
1243 the chairman is familiar with, the Supreme Court stated that,  
1244 "The right of suffrage can be denied by a debasement or



1245 dilution of the weight of a citizen's vote just as  
1246 effectively as by wholly prohibiting the free exercise of the  
1247 franchise."

1248         So an illegally voting non-citizen or a citizen, for  
1249 that matter, who uses fraudulent documents to vote more than  
1250 once or otherwise votes illegally, in that case, would  
1251 violate the clear terms of H.R. 1281 and be subject to up to  
1252 5 years in prison.

1253         And this amendment is, therefore, germane, because it  
1254 addresses that very point of dilution.

1255         Chairman Conyers. I thank the gentleman from Virginia.

1256         And the chair is prepared to rule on the motion of  
1257 germaneness.

1258         Members of the committee, this objection falls squarely  
1259 within the same ruling that we just issued prior on another  
1260 amendment.

1261         The amendment deals with conduct that constitutes voting  
1262 when there is no right to do so and the bill before us deals  
1263 with prohibiting conduct that prevents someone from  
1264 exercising the right to vote.

1265         And so I cannot accept the Supreme Court's dictum that  
1266 would tell us whether this amendment is germane within the  
1267 scope of this bill.

1268         And so the chair rules that the amendment is not, again,  
1269 germane to the bill as it deals with a different subject

1270 matter and purpose. And so the chair rules the amendment out  
1271 of order and sustains the point of order.

1272 Mr. Feeney. Mr. Chairman, may I be recognized for a  
1273 parliamentary inquiry?

1274 Chairman Conyers. Of course.

1275 Mr. Feeney. Mr. Chairman, if I were respectfully to  
1276 disagree with the chairman's decision, I would not want to  
1277 press the point that we had just voted on the exact same  
1278 issue, that would not be an acknowledgement that I  
1279 necessarily agreed with the decision of the chair.

1280 Chairman Conyers. Absolutely correct and the chair  
1281 would honor the gentleman's continued objection and I welcome  
1282 the discussion that we have had on this point.

1283 Are there other amendments?

1284 Peter King is recognized for what purpose?

1285 Mr. King. Thank you, Mr. Chairman. I have an amendment  
1286 at the desk.

1287 Mr. Nadler. Mr. Chairman, I reserve a point of order on  
1288 this amendment.

1289 Chairman Conyers. Could I ask my friend, do you have  
1290 more than one amendment or have you reduced them?

1291 Mr. King. Mr. Chairman, I may have, and this would not  
1292 go to the subject matter anticipated by the gentleman from  
1293 New York.

1294 But I would like to call up amendment number 57, please.

1295 Chairman Conyers. All right. The clerk will report.

1296 The Clerk. "Amendment to H.R. 1281, offered by Mr. King  
1297 of Iowa. Page 6, after line 15, insert the following: (4)  
1298 National Database Study. The attorney general shall conduct  
1299 a study into the creation—"

1300 [The amendment by Mr. King follows:]

1301 \*\*\*\*\* INSERT \*\*\*\*\*

1302 Mr. Scott. Mr. Chairman, I reserve a point of order.

1303 Chairman Conyers. Mr. Scott reserves a point of order.

1304 Mr. King. Mr. Chairman, I ask unanimous consent that my  
1305 amendment be ruled as read.

1306 Chairman Conyers. Yes. And the chair recognizes Steve  
1307 King of Iowa.

1308 Mr. King. Although I appreciated that King-  
1309 Sensenbrenner bill that passed out of here last year, Mr.  
1310 Chairman, I appreciate your acknowledgement.

1311 Mr. Chairman, my amendment, I believe the creation of a  
1312 national citizenship and residency database to prevent  
1313 illegal voting by non-citizens and the illegal voting in more  
1314 than one state is essential in maintaining the integrity of  
1315 the voting rolls.

1316 My amendment directs the attorney general to conduct a  
1317 study, I repeat, just a study, into the creation of such a  
1318 database.

1319 There are penalties for illegal non-citizen voting fraud  
1320 in federal law, but state and local election administrators  
1321 don't have a means of checking to ensure that only legal  
1322 voters are voting.

1323 So, consequently, such fraud often goes undetected, but  
1324 we have also detected fraud, which is in the hearing.

1325 Patrick Rogers, an attorney in New Mexico, testified  
1326 before the House Admin Committee in June of 2006, "Voting by

1327 illegal immigrants is one of the toughest issues to study in  
1328 the election and voting area. This is because there is no  
1329 centralized or accessible list of illegal immigrants that can  
1330 be compared to voter registration lists or lists of persons  
1331 who actually cast ballots."

1332         And in 2005, a prominent group of bipartisan leaders and  
1333 scholars, led by President Carter and Secretary of State  
1334 James Baker, III, issued an influential report.

1335         One of the chief recommendations of that bipartisan  
1336 Baker commission is as follows. Instead of creating a new  
1337 card, the commission recommends that states use the REAL ID  
1338 cards for voting purposes.

1339         The REAL ID Act was signed into law in May of 2005. It  
1340 requires states to verify each individual's full name, date  
1341 of birth, address, Social Security number and U.S.  
1342 citizenship before the individual is issued a driver's  
1343 license or a personal ID card.

1344         The REAL ID is a logical vehicle, because the National  
1345 Voter Registration Act, the Motor Voter Act, established a  
1346 connection between obtaining drivers' licenses and  
1347 registering to vote.

1348         The REAL ID card adds two critical elements for voting.  
1349 One is proof of citizenship and verification by using the  
1350 full Social Security number.

1351         The REAL ID Act does not require that the card indicate

1352 citizenship, but a provision will need to be adopted in order  
1353 to assure that for voting purposes.

1354       But a study will reveal this and other issues and we are  
1355 here about voter registration, voter integrity, and we really  
1356 can't provide that unless we have a voter registration list  
1357 that is complete, it is national, it is integrated, and we  
1358 can't get down that path without a study.

1359       And so we are here, and I heard testimony on both sides  
1360 of this argument, and I participated in that testimony before  
1361 this committee. I very much appreciate the effort that has  
1362 been brought forth here to try to bring the maximum amount of  
1363 integrity into our voting here in this country.

1364       And as I stated on the record that day, that I think the  
1365 greatest risk that we have is losing the integrity of our  
1366 system.

1367       So I want a system that has maximum integrity. This  
1368 takes us down the step to have a real look by the attorney  
1369 general's study and I would urge adoption of my amendment.

1370       Thank you, Mr. Chairman. And I would yield back.

1371       Chairman Conyers. I thank the gentleman.

1372       The gentleman from Virginia, Mr. Scott?

1373       Mr. Scott. Mr. Chairman, this appears to put a brand-  
1374 new issue into a bill that is not germane to the original  
1375 intent of the bill and, therefore, I would request the point  
1376 of order.

1377 Chairman Conyers. The chair is prepared to rule on the  
1378 point of order.

1379 Mr. King. Mr. Chairman?

1380 Chairman Conyers. Yes?

1381 Mr. King. May I speak to the point of order?

1382 Chairman Conyers. Of course you can. The gentleman is  
1383 recognized.

1384 Mr. King. Thank you, Mr. Chairman.

1385 We have had some extensive discussions here on the point  
1386 of orders that have been raised in the previous two  
1387 amendments. I would just present that I support those  
1388 arguments, certainly, and I think it is an important  
1389 principle that we are discussing here today with those  
1390 arguments on the Sims case.

1391 But I would argue that if we look into this bill, it is  
1392 the Deceptive Practices and Voter Intimidation Prevention Act  
1393 of 2007, deceptive practices being people who are voting who  
1394 are not citizens, people who are voting who are perhaps in  
1395 violation of the law in other ways.

1396 And if we are serious about improving the integrity, we  
1397 ought to just go back to the title of this bill and have a  
1398 ruling here that is going to allow for us to improve the  
1399 integrity, because I believe this may be our only chance to  
1400 do so here in the 110th Congress.

1401 But from the germaneness standpoint, this does address

1402 directly deceptive practices and a knowledge about those  
1403 deceptive practices and whatever our opinions are here, we  
1404 should never deny knowledge, especially about something that  
1405 would erode our electoral system and destroy our  
1406 constitutional republic.

1407       And I would yield back.

1408       Chairman Conyers. Well, I want to thank the gentleman  
1409 for reaffirming his commitment to improving the voting system  
1410 in this country and by striking out as many deceptive  
1411 practices as we can. I think that is an ideal that we all  
1412 agree to.

1413       But this same point of order keeps coming up and so that  
1414 you will sleep better in your bed at night over the chair's  
1415 ruling on this, the parliamentarian of the House of  
1416 Representatives has confirmed the analysis that the staff has  
1417 made that has led me to believe once again we have a non-  
1418 germane amendment.

1419       This time, though, Steve King, because the amendment  
1420 creates a national database cleanup, noble purpose though it  
1421 is and certainly with merit, but it deals with a separate  
1422 subject matter, a separate and broader subject matter from  
1423 the bill.

1424       And so the chair reluctantly sustains the point of order  
1425 made by the gentleman from Virginia.

1426       And I ask if there are other amendments?



1427 I understand you may have one more.

1428 Mr. King. Mr. Chairman, in light of the flow of this  
1429 discussion here and I think in an effort to cooperate, if I  
1430 might be recognized just to strike the last word for about a  
1431 minute.

1432 Chairman Conyers. Absolutely.

1433 Mr. King. I thank you, Mr. Chairman.

1434 I certainly agree with the statements made by Mr. Feeney  
1435 and I cede to the point made by the chair for the purposes of  
1436 this amendment. I would just simply raise the issue that we  
1437 are dealing only with voter intimidation here by this  
1438 germaneness rulings that have come from the chair, which many  
1439 of us disagree with.

1440 But I also recognize, I believe, in your philosophy and  
1441 in your intellect and in your heart that the other side of  
1442 this equation, the willful fraud that may be taking place,  
1443 many of us think is taking place across this country, is a  
1444 subject matter then, by your ruling, outside the scope of  
1445 this bill.

1446 But I also recognize that we have had a discussion here  
1447 about being able to take that subject matter up in a  
1448 subsequent period of time in this Judiciary Committee and I  
1449 would ask if that still remains the intention of the chair.

1450 Chairman Conyers. Well, may I assure the gentleman from  
1451 Iowa that that is precisely my purpose and I join with you in

1452 the concern that you have demonstrated here and others on the  
1453 Republican side of this committee and I appreciate it deeply.

1454 Mr. King. And I very much look forward to continuing  
1455 that work with you, Mr. Chairman. Thank you very much, and I  
1456 yield back.

1457 Chairman Conyers. I thank you.

1458 Members of the committee, if there are no further  
1459 amendments, the question is now on reporting the bill  
1460 favorably to the House.

1461 All those in favor will signify by saying, "Aye."

1462 And those opposed, signify by saying, "no."

1463 In the opinion of the chair, the ayes have it, and the  
1464 bill, H.R. 1281, is ordered reported favorably to the House.

1465 All members, of course, will be given 2 days, as  
1466 provided by the House rules, in which to submit additional  
1467 dissenting supplemental or minority views will be added.

1468 Pursuant to the committee rule 2(j), the chair is  
1469 authorized to offer such motions as may be necessary in the  
1470 House to go to conference with the Senate on the bill.

1471 There being no further business, the committee stands  
1472 adjourned.

1473 [Whereupon, at 12:22 p.m., the committee was adjourned.]