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Testimony from:
Matthew Germer, Elections Fellow, R Street Institute

In OPPOSITION to HB 6, “AN ACT relating to election integrity and preservation of the purity of the ballot box through the prevention of fraud in the conduct of and election.”

March 25, 2021

House Committee on Elections

Chair Cain, Vice Chair González and members of the Committee:

Thank you for considering my testimony. My name is Matthew Germer, and I conduct research on election reform for the R Street Institute, a nonprofit, nonpartisan public policy research organization. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government in many areas, including election reform. This is why HB 6 is of special interest to us.

R Street ardently believes state legislatures should be focused on expanding opportunities to vote for all eligible voters without compromising election integrity. The election this past November provided a fantastic opportunity to see which states’ election systems could grapple with a pandemic, record turnout and concerns around unscrupulous election interference. What we learned from our “laboratories of democracy” across the country is that states that made robust investments in vote-by-mail and early voting prior to 2020 were able to distribute, collect and count ballots with minimal disruption. These states showed that vote-by-mail is an effective system for making voting easier without sacrificing election security.

Unfortunately, House Bill 6 takes a different approach. While we support the provisions cracking down on ballot harvesting, supporting election watchers and keeping voter rolls up-to-date, we are concerned that the bill curtails freedom of speech and takes an unfriendly approach to vote-by-mail.

First, Section 5.05 of the bill infringes on the free speech rights of candidates, specifically incumbents, by placing a “gag order” on public officials that prohibits them from telling voters about their options. The bill defines “public official” in section 1.06 so expansively that it includes members of the legislature and elected officials throughout the state. Practically speaking, in an election between an incumbent and a private-citizen challenger, the challenger would be permitted to encourage supporters to apply for absentee ballots while the incumbent would be prohibited from doing so. As a matter of basic fairness, the legislature should avoid creating such an imbalance.



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To rectify the inequity created in Section 5.05, it might be tempting to restrict the speech of all candidates, but such a change would be a mistake for two reasons. First, the prohibition in Section 5.05 would be a “content-based restriction” under First Amendment jurisprudence, and such restrictions are unlikely to survive judicial review. Second, when it comes to matters of political speech, the government should look to encourage more speech rather than less. As a result, the committee should consider removing Section 5.05 and in doing so encourage freedom of speech.

In addition to the free speech concerns, this bill is moving in the wrong direction on vote-by-mail more generally. According to the National Conference of State Legislatures, Texas is now one of only 16 states that requires an excuse to receive an absentee ballot. While Texas is famous for charting its own course, it is also famous for promoting individual liberty and empowering its citizens to live their lives as they see fit. No-excuse absentee voting promotes individual liberty by providing voters more options for how to select their leaders. The committee should consider amending this bill to allow for no-excuse absentee voting, or at the very least should remove the provisions from this bill that make it harder for voters to file for absentee ballots.

Texans are well-known for their love of freedom and their strong free-market orientation. The state should take this approach with elections as well. We should not be focused on limiting pathways to voting or restricting freedom of speech. Instead, we should do the opposite, which is why it is critical that the legislature amend or oppose HB 6.

Thank you for your time,

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