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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 an election.”

May 5, 2021

Texas Legislature

Speaker Phelan, President Pro Tempore Birdwell and members of the Texas Legislature:

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 House Bill 6 is of special interest to us.

R Street ardently believes that state legislatures should be expanding voting opportunities for all eligible voters without compromising election integrity. The election this past November revealed which states’ election systems could grapple with a pandemic, record turnout and concerns around unscrupulous election interference. We learned from our “laboratories of democracy” 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.<sup>i</sup> These states showed that vote-by-mail makes voting easier and does not sacrifice election security.

Unfortunately, HB 6 takes a different approach. While we support the general thrust of the bill—cracking down on ballot harvesting, promoting election transparency and keeping voter rolls up-to-date—we are concerned that HB 6 takes an unfriendly approach to vote-by-mail, curtails freedom of speech and fails to incorporate some of the best provisions of its counterpart, Senate Bill 7.

First, Section 5.04 of HB 6 makes it harder to notify voters about absentee ballot rights, by placing a “gag order” on public officials, which prohibits them from informing voters about the option to vote absentee. These changes move Texas in the wrong direction. The legislature should look to make absentee voting easier, not harder.

According to the National Conference of State Legislatures,<sup>ii</sup> 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.



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No-excuse absentee voting promotes individual liberty by providing voters with 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.

Further, the “gag order” on public officials infringes on the free speech rights of candidates, specifically incumbents. The bill defines “public official” in Section 1.06 so expansively that it includes all members of the legislature and all elected officials throughout the state. 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. Setting aside the potential free speech concerns, fairness demands the legislature should avoid creating such an imbalance.

Finally, HB 6 could be improved by including key provisions from SB 7, as it passed the Senate. SB 7, as engrossed, improves election administration through the creation of a statewide online ballot tracking tool and the requirement to maintain a paper audit trail. Each of these provisions comes with costs, but all are well worth the investment. This is why multiple other states offer online ballot tracking<sup>iii</sup> and mandate paper audit trails<sup>iv</sup> to help facilitate smooth elections.

Texas 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 encourage voters to cast a ballot in a way that works for them and provide the necessary tools for smooth and transparent elections. This is why it is critical that the legislature oppose HB 6, as constructed, and instead adopt the amendments identified here.

Thank you for your time,

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<sup>i</sup> See, e.g., Matt Vasilogambros et al., “After Historic Early Voting Surge, Fewer Hiccups on Election Day,” Pew Charitable Trusts, November 4, 2020. <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/11/04/after-historic-early-voting-surge-fewer-hiccups-on-election-day>.

<sup>ii</sup> “VOPP: Table 1: States with No-Excuse Absentee Voting,” National Conference of State Legislatures, May 1, 2020. <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-1-states-with-no-excuse-absentee-voting.aspx>.

<sup>iii</sup> See, e.g., VoteWA in Washington and MyVote in Wisconsin. <https://voter.votewa.gov/WhereToVote.aspx>; (<https://myvote.wi.gov/en-us/TrackMyBallot>

<sup>iv</sup> “Voting System Paper Trail Requirements,” National Conference of State Legislatures, June 27, 2019. <https://www.ncsl.org/research/elections-and-campaigns/voting-system-paper-trail-requirements.aspx>.