

SUBJECT: Electioneering conducted near a polling place

COMMITTEE: Elections —committee substitute recommended

VOTE: 6 ayes — Morrison, Johnson, Klick, Miller, Simmons, Wu
0 nays
1 absent — Miles

WITNESSES: For — Dana DeBeauvoir, County and District Clerks Legislative Committee; Chris Howe; Matt Krause; Glen Maxey, Texas Democratic Party; B R “Skipper” Wallace, Republican County Chairman’s Association; Thomas Washington; (*Registered, but did not testify*: Donna Davidson; Eric Opiela)

Against — (*Registered, but did not testify*: Jim Allison, County Judges and Commissioners Association of Texas; Mark Israelson, City of Plano; TJ Patterson, City of Fort Worth; Walt Smith, Scenic Texas)

On — Jacquelyn Callanen, Bexar County Elections; Scott Houston, Texas Municipal League; John Oldham, Texas Association of Election Administrators; Michael Vasquez, Texas Conference of Urban Counties (*Registered, but did not testify*: Keith Ingram, Texas Secretary of State Elections Division)

BACKGROUND: Election Code, sec. 61.003 governs electioneering and loitering near a polling place during the regular voting period. It is a class C misdemeanor (maximum fine of \$500) under this section to loiter or electioneer for or against any candidate, measure, or political party within 100 feet of any outside door through which a voter may enter a building in which a polling place is located.

Under sec. 85.036 , it is a Class C misdemeanor to electioneer for or against any candidate, measure, or political party within 100 feet of any outside door through which a voter may enter a building in which a polling place is located.

DIGEST: Under CSHB 259, an entity that owned or controlled a public building could not prohibit electioneering on the building's premises outside of the area specified in Election Code, secs. 61.003 and 85.036 during the voting or early-voting period. The entity could enact reasonable regulations concerning the time, place, and manner of electioneering. "Electioneering" would include the posting, use, or distribution of political signs or literature.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY: CSHB 259 would ensure the protection of First Amendment rights and emphasize their importance to municipalities and law enforcement. The bill would prevent situations such as the arrest last year of a citizen in Watauga in Tarrant County for merely holding a sign outside of the 100-foot perimeter. Political speech, including electioneering, is one of the most important forms of constitutionally protected speech, and the ability to exercise this right is especially important during an election. CSHB 259 would emphasize that protecting this speech is a priority.

Workload of public entities. CSHB 259 would not put an undue burden on public entities beyond what the U.S. Constitution requires. Although some electioneering could require local governments to alter normal routines or accommodate public demands, democracy is complicated and sometimes government must accept minor inconveniences for the greater good, including the protection of speech.

Disruptions caused by electioneering. The bill would not cause disruptions nor prohibit public entities from conducting normal business. Entities in charge of polling locations still could enact reasonable regulations to protect patrons and place reasonable limits on the time, place, and manner of electioneering but would not be able to unconstitutionally prohibit political speech. The bill would preserve the existing 100-foot perimeter within which electioneering is prohibited, which would allay concerns about disruptions caused by electioneers attempting to influence voters while inside the polling location. CSHB 259 would seek to codify and reinforce the current protections provided by the First Amendment.

Posting of signs. CSHB 259 would clarify the definition of electioneering for local entities to ensure that political speech was uniformly protected. Some municipalities have incorrectly interpreted the posting of signs and distribution of literature as activity that falls outside of the definition of “electioneering,” and incorrectly prohibited it. The clarification in the bill would prevent municipalities from inadvertently violating the constitutional rights of electioneers.

OPPONENTS
SAY:

Workload of public entities. CSHB 259 would burden commissioners courts and those controlling other public buildings with having to referee between groups desiring to electioneer on public property. Electioneering outside of polling locations has grown beyond mere leafleting and sign-holding. Often parties or candidates want to hold a barbecue or place a tent on the premises of a building outside the 100-foot perimeter. This creates logistical problems for the public entities in these buildings, which find they having to mediate conflicts and make decisions for the political groups. Preventing these entities from prohibiting electioneering on their premises would exacerbate these issues.

Disruptions caused by electioneering. The bill would cause disruption of regular government functions and disturb the public. Polling locations are often in courts, libraries, and schools, which continue their normal business while serving as polling locations. Aggressive electioneering on the premises of these buildings disrupts their regular functions and interrupts access and voters. Rampant problems with electioneering make it more difficult to find polling locations, as more entities are declining to participate when polling locations are determined. Entities that run these buildings have and need the ability to prohibit electioneering to preserve their functions and protect patrons, voters, and members of the public. This bill would take away this ability.

Posting of signs. CSHB 259 would pre-empt existing law and city ordinances, taking local control out of the hands of municipalities. Municipalities throughout the state have sign ordinances that reduce visual clutter and preserve local beauty. Citizens and governing bodies of these municipalities take pride in the way their cities look and have gone through the proper legal channels to preserve the aesthetics of their communities. Sign-posting practices can ruin manicured lawns and puncture irrigation systems, creating a mess and resulting in repair costs for the public entities once the election is over. By including posting of

signs in the definition of electioneering, this bill would overrule these sign ordinances, invalidating regulations that citizens have worked hard to enact.

NOTES:

CShB 259 differs from the bill as filed by adding amendments to section headings, changing the “shall not” provision to a “may not” provision, and moving the prohibitions to a different section of the code.

The identical companion bill, SB 928 by Paxton, was referred to the Senate State Affairs Committee on March 12.