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SUPPLEMENT

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SB 1 DEBATE - THIRD READING

(Murr, Lozano, Clardy, White, Jetton, et. al. - House Sponsors)

SB 1, A bill to be An Act relating to election integrity and security, including by preventing fraud in the conduct of elections in this state; increasing criminal penalties; creating criminal offenses.

REPRESENTATIVE MURR: Members, I apologize. My voice is almost gone. I want to be brief with my remarks and I know that other members would like to make remarks as well. So succinctly, let me tell you a couple of things that I think are important. The legislation contained in **SB 1** has been discussed and debated by members of this body for 14 hours in a hearing during the first called session, for eight and a half hours in a hearing in the second called session, and 13 hours on the floor yesterday. That's 35 hours. That shows that this legislation is important to all of you, to your constituents, to stakeholders, to the State of Texas. I appreciate the input, and I am going to leave you with one note.

Representative Davis mentioned yesterday, when she asked me some questions, she asked me about experiences. She asked about personal experiences. And that made me want to share something with you today. Ironically, today is Lyndon Johnson's birthday. My grandfather, who passed away before I was born, was born in a log cabin. He made it through the fourth grade. He was a public servant and he lost his only election to Lyndon Johnson by 83 votes in a ballot box in Jim Wells County. Now, my mother tells me a story that when she was a little girl, my grandfather and her ran into Lyndon one day. Lyndon at that time was the majority leader in the United States Senate. Lyndon picked up that little girl, tossed her in the air, and my grandfather and Lyndon shook hands and talked about the weather. I believe that exudes strong character. I expect that even with differences in opinion in this body and with my colleagues, that all of us, at the end of the day, will also exhibit strong character and that while we may have differences of opinion and we may fervently defend the opinions of our constituents, we will shake hands and we will continue with the decorum and good life that we owe all Texans.

So Ms. Davis, I appreciate you making me reflect upon how meaningful a piece of legislation like this can be to each and every one of us because my life was impacted because of election integrity. And I jokingly like to say that my grandfather lost a race. He was widowed. He went back home to practice law in a small town. Met my grandmother who was widowed from World War II. They got married and had my mother. And but for Lyndon Johnson, I would not be here. So happy birthday to Lyndon Johnson. Members, I appreciate the levity, but

at the end of the day, I appreciate your strong character, our differences of opinion, and I look forward to shaking each and every one of your hands for spending the time to discuss this important issue.

REPRESENTATIVE C. TURNER: When Donald Trump lost his election in 2020, he and other republicans whipped their base into a frenzy with crazy conspiracies about election fraud. Because of that and because many republican leaders still refuse to level with their supporters, many people in this country and this state still wrongly believe that Donald Trump actually won the last election. We've talked about it a lot on this floor in the context of this bill. It's the big lie—the big lie that is so toxic and so dangerous. It is a threat to our democracy. The big lie led directly to the January 6 insurrection—not a supposed insurrection, a real-life tragic insurrection. It happened. The whole world saw it. Police officers died. Members of Congress and the vice president could have been killed. To deny it happened is shameful.

But the big lie didn't die when the insurrectionists were defeated. It didn't even die with the peaceful transfer of power on January 20. No, unfortunately, the big lie lives on. The big lie has become the fuel for bills like **SB 1** and similar legislation across the country. Of course, here in Texas we know the attack on voting rights didn't start with the big lie or this bill. For roughly two decades, the majority here has been trying to chip away at the freedom to vote. You've passed laws like restrictive photo ID, which federal courts have twice struck down as racially discriminatory, and redistricting maps drawn to marginalize voters of color. Texas voting laws and redistricting plans have been found to be intentionally discriminatory—racially discriminatory—by federal courts 10 times. That's in the last decade alone.

So now we have **SB 1**, the latest in a long line of attacks on the freedom to vote. Yesterday, I asked the bill author about whether or not an impact study had been done to assess how this law would affect racial minorities in Texas. The response? Well, that same question's been asked during the committee process, and no, we just haven't done that, haven't made any attempt to do that. So later, Representative Rose offered a series of amendments to require such a study in different forms to see if this bill would, in fact, create a racially discriminatory impact on Texans, on our constituents, your constituents, but you voted those amendments down. So if the majority is so confident, as you've said, that this bill is not, in fact, racially discriminatory, why are you so afraid to put the theory to the test? For that matter, why are you afraid of the facts on all these alleged election irregularities that you've read about? You voted down an amendment to require a basic report about election-related investigations and prosecutions. So the next time the attorney general spends 22,000 staff hours and countless taxpayer dollars searching haystacks for a handful of cases about so-called election fraud, there still won't be any transparency, any requirement, to share that information. It's an unlimited, unfettered, fishing expedition.

While you forfeited those opportunities to make this bill better, you also took steps to make it worse. As the bill author and I discussed yesterday, his amendment empowers signature verification committees to pick and choose which voters they will notify to cure a ballot. So not only are we going to see an

uneven application of the law from county to county, these signature verification committees are apparently free to apply this law unevenly within their own county. So what is to stop, I ask you, what is to stop a rogue committee—which, again, are made up of partisan appointed officials—deciding who gets to cure their ballot and who doesn't? Could that be based on their zip code? Could it be based on their surname? I hope not, but there's nothing in this bill to stop that from happening.

Members, make no mistake. The eyes of our nation and our state are watching this body right now because they know what's at stake. Congress and the administration are watching because they know what is at stake. They know because we've told them a lot over these last several weeks that they need to act in order to protect voters from the regressive policies in this bill and other bills like it being introduced and enacted across the country. And when you all pass this bill in a few minutes, you're about to prove us correct.

Thankfully, earlier this week the United States House of Representatives passed the John Lewis Voting Rights Advancement Act with an eye toward what is happening in this state on this floor right now. When this federal law does go into effect, we can have hope that the most egregious and discriminatory provisions of this bill will never see the light of day, will never impact one voter in this state. But for that to happen, we need the United States Senate to act on voting rights. United States senators, we need you to do it, and we need you to do it now. Do it for the Texans whose freedom to vote is threatened. Do it for all Americans. Time is running out.

REPRESENTATIVE ANCHIA: When Chair Murr laid out his bill yesterday and ran through Texas' leadership on voting rights, he talked about milestones in 1975, 1987, 1991, and 1997, when Texas was leading the way after the 1965 Voting Rights Act passed by President Lyndon Baines Johnson. And instead of damning with faint praise, I will offer him a happy birthday today because if it wasn't for his courage, if it wasn't for his willingness to act, we would not be living the fullness of this American experience where Latinos, African Americans, people of color can fully participate in the democracy. And it's only been since 1965.

I was born in 1968. While that makes me old, it's also given me an opportunity to observe the progress that we've made so that people of color could fully participate in this American experience, have a place at the American table. And it hasn't been that long. Heck, women have only had the right to vote since about 1920, 1921. That's just not a long time. And so in constructing that timeline, Chairman Murr, in going through 1975, 1987, 1991, 1997, that seems like recent history to me. Then I juxtapose that against the last decade. I've been here for nine terms and I have observed over and over and over again these erosions of the right to vote. And the commonality there has been when republicans took full control of Texas government. I don't think anybody's proud of that. Voting rights used to be bipartisan. In fact, they were bipartisan in 1965 when republicans joined President Johnson in pushing for voting rights for Latinos and African Americans. They were bipartisan as recently as the

presidency of another Texan, George W. Bush, who got unanimous senate support for voting rights reauthorization. We find ourselves in a very different place today.

For those of you who have publicly stated that somehow the quorum break was some political stunt, it might have been for some. But it wasn't for me. I believe this was a righteous cause. I believe it was a just cause. I believe it was an American cause and a cause where people like me have had to fight just to keep that right to vote so that people wouldn't come onto this house floor and invent cases of voter impersonation to try to justify their erosion of the right to vote. They wouldn't invent voter purges that sought to kick 100,000 U.S. citizens off the rolls and try to politicize that and try to refer those same U.S. citizens for prosecution during the failed voter purge. And those 10 findings of intentional discrimination against this body in the last decade alone—they don't go away. That is still there, and that's the backdrop that we find ourselves with.

But I want to turn my attention now, as Chair Turner did, to the eyes of the nation, to the eyes of congress. When we met in the Roosevelt Room with Vice President Harris, she asked us, please give us more time. And we broke quorum not once but twice in what I believe is a just cause, an American cause. And we not only bought the time but what we have left in front of us are 90 days. I want to focus on those 90 days now. To President Biden, to Vice President Harris, to Leader Schumer, to Speaker Pelosi, to republican senators from the State of Texas, we have 90 days. Once this bill passes, we have 90 days from the end of this session to act. The clock is ticking. There's an opportunity to rekindle that spirit of bipartisan cooperation on voting rights that has been lost, where voting rights is now a partisan issue. There's an opportunity to take action on federal legislation that is going to protect voting rights not just for millions of Texans but for millions of Americans, disabled, African Americans, Latinos. And so the clock is ticking.

During the debate yesterday, we watched people come up and make heartfelt policy arguments and engage in, for the most part, civil debate about these policy differences. I know the people of Texas are watching, but I also know the people of this country are watching. And they saw what were very good arguments, in my view, that were tabled—that were defeated with, in some cases, little debate; in some cases, pure dismissiveness. But I am not done. I plan on continuing this fight during this legislative session.

During the quorum break, I was buoyed by a letter that I received on June 7, 2021, by LBJ—Luci Baines Johnson. And on her letterhead she bemoans this current situation in Texas where she says, "Alas, in recent years the heart of this great Act"—that her father had passed—"has been compromised. This summer, legislatures across the country are diminishing opportunities to our vote, and sadly, Texas has been one of the most egregious states in eliminating voting opportunity for all our people. Those who once joined us in the battle in the fight for social justice now seek to block it." So to Luci, I say thank you. To Lyndon, I say happy birthday. And to the nation that's watching, I say 90 days. That's what we've got. Thank you and God bless you, and God bless the great State of Texas.

REPRESENTATIVE GOODWIN: I'm here today to speak out against **SB 1**, the election bill before us. I am against the bill because it is predicated on the big lie, the big lie that Trump won the election of 2020. The election bill removes local control by telling Harris County and all counties—but Harris County in particular—the measures they took to provide a safe environment in which to vote during a pandemic are no longer allowed. It removes local control which we at one time believed in. And many of us still do believe local control is imperative. This election bill discourages not only voters who won't have options available in 2022 that they had available in 2020, but it also discourages election workers by creating and enhancing penalties if they aren't hypervigilant in knowing and following the law which can sometimes be up for interpretation. When I say it discourages voters, I say this because some of those voters may have voted for the first time in 2020 simply because they had options that fit their needs.

While I intend to vote against the bill, I do think there are a few positive things to point out. First, the Texas election bill brought national attention to voting rights and election laws. We've seen congress push forward the issue with the house passing the John Lewis Voting Rights Advancement Act much sooner than expected. We continue to call on the U.S. Senate to pass the bill as soon as possible and send it to the president. Second, the bill will now require poll watchers to go through training prior to working in a polling or a counting site. As long as we are going to have people watching our elections, they should have training on the rules and procedures as well as election law so they know how to comply with the law. Third, I hope this bill will bring back some trust in the system of elections through a variety of provisions. Trust among us has waned. I much prefer living in a society based on trust than mistrust.

As I mentioned, the bill has brought a great deal of attention to voting rights. Many people are aware of the quorum break the bill caused as well as the contentious debate. I know that people are watching. I get calls and e-mails every day from people who are aware we are working on this election bill. I also know that people are hyper aware that elections have consequences. The consequences are who serves you as your representatives and senators, governor and lieutenant governor—your leaders.

Moms and dads across this state are watching closely their leaders. Their leaders are allowing hospitals to fill up, and yet we are banned from implementing mask mandates as our public health officials are asking. Elections have consequences and people are watching. Their leaders have allowed this to become a partisan and divisive issue. Look here in this room. Democrats, for the most part, wear masks. Republicans, for the most part, don't wear masks. I just have to tell you folks, COVID-19 doesn't care if you're a republican or democrat, but it does infect you more easily if you don't have a mask on. And people of this state look up to see what actions we take. Elections have consequences, and people are ready to go vote in 2022. This bill before us today may add hoops for people who want to vote by mail. It may disadvantage those who are differently

abled. It may intimidate the inexperienced voter or the person who might assist them. But when a state is in crisis, as Texas is in crisis due to COVID-19, people take notice and people vote.

REPRESENTATIVE ROSENTHAL: Members, if we're really being truthful, we ought to tag this bill with a line that reads: "**SB 1** makes it harder to vote and easier to cheat." I'd say any assertion to the contrary is easily disproven if you look at it critically. Y'all, Texas is already the most difficult state in the union to register and cast a vote, and this bill is going to make it even harder. The bill is going to make it harder to cast a vote. This bill erects new barriers to voting such as additional requirements for mail-in ballots. It places new limits and additional rules for voter assistance. It even adds deterrents for assistance from family members. It deters family members from assisting their family to vote. The bill seeks to attack community organization efforts to turn out the vote, and it seeks to purge the voter rolls. It uses criteria that disproportionately affects communities of color, especially Latinos. But that's not all. Besides making it harder to vote, the bill makes it easier to cheat, and I say that's in the form of voter intimidation and also intimidating our election judges and officials. The bill even has provisions to lay the groundwork to challenge election outcomes and undermine faith in our election system in Texas. Seems to me that's the last thing we want to do.

The bill criminalizes multiple aspects of the voting process, including the threat of new or elevated criminal penalties for election judges to discourage them from even maintaining order in the election place, in the polling location, especially with regard to these partisan poll watchers. With this bill, a partisan violating the law can only be asked to leave but that same disruptive person can turn around and bring a criminal charge against the election official who's just trying to maintain order in the polling place. This philosophy will lessen our ability to prevent voter intimidation by partisan poll watchers. The bill expands and harshens possible criminal penalties for voter assisters and community organizers. These provisions are clearly aimed at reducing voter participation, and we all know that these measures disproportionately affect communities of color. And that's certainly why the bill authors have not sought analysis to determine if there would be a disproportionate impact on our communities of color—because they already know. In fact, that's the design of this legislation. So the proposed legislation in front of us, by design, will disproportionately discourage and exclude communities of color while also disproportionately intimidating communities of color.

Texas has a long history of election laws proven to reduce overall participation especially affecting, surgically affecting, communities of color. Do y'all think that might be driven by shifting demographics that have been made crystal clear by the preliminary census results we've received? Y'all, if this body were reflective of the current population of Texas as reported by the census so far, we would have just as many Hispanics as whites in this chamber—40 percent each. That would be 60 out of 150 members. Look around you and tell me, is that our makeup in this chamber? Members, we have been asked to avoid using a certain word. So what's an appropriate alternative term to describe a situation

where people of color are systemically and methodically disadvantaged? Because that is certainly the case for Texas election law. And this bill will elevate the attack on our freedom to vote to a whole new level.

We always use phrases like well, if you really wanted to make it easier to vote, you would "fill in the blank." Clearly, that's not the actual intent of this bill because if it was to make voting easier, we would work to expand access. We would implement stuff like we did in Harris County in this last election like allowing drive-thru voting and 24-hour voting locations. We would work to expand and strengthen vote by mail programs to instill confidence in them instead of undermining them, as they have done so successfully in states like Colorado and that liberal bastion Utah. But no, instead of expanding and strengthening vote by mail, we instead choose to threaten to jail elections administrators and public officials for simply providing information on how to qualify and sign up to vote by mail. Y'all, I have to let this sink in. Instead of expanding access, we are threatening to jail folks who are working to expand access to the ballot. I proposed an amendment aimed at promoting public safety and health in our polling places. I proposed allowing anyone who is overtly sick to vote curbside, but that was rejected without any logical explanation. And y'all wonder why we broke quorum?

The entire premise of this legislation is founded on the notion that our elections are not secure or not secure enough in Texas. We call that the big lie for a reason. I like to play games with numbers—you know me—but not today. We already know proving cases of vote problems in Texas is minuscule—miniscule. You're seriously more likely to be struck by lightning than to find voter fraud in Texas. The people of Texas want us to improve access to health care. They want us to fight COVID. They want us to improve public education. They really want us to fix the grid. But that's not what we're doing here today. I submit that if the focus were on forwarding truly popular policy, you would want more voter participation, not less. And that's why I say this bill is bad for Texas. Because it's a bold attack on our freedom to vote.

REPRESENTATIVE ZWIENER: I want to issue each and every one of you a challenge today and that's to go out on the ground in your districts and knock on the door of someone who isn't voting and ask them why. It's not lost on me that almost every single person in this chamber doesn't have a real November. Most of you do not have your election outcomes in question in the November election. Your contest is in the primary. What that means is that your election is generally decided by the people who already are voting from year to year and it's your task to persuade them to vote for you. A general election is a different beast. They are often largely decided not just by persuasion of the people who already vote but also by voter turnout, who comes to the ballot. Because of my experience—that again, only a handful of us share on this floor—I have some subject matter expertise on why people don't vote. And so often the answer is because it's hard. Or they don't know how. Or they don't understand the process or the options that are available to them.

I keep thinking of one moment in the debate last night where Representative Neave had offered up an amendment to make curbside voting more accessible. In the conversation around that amendment, Representative Murr stated it had been around since the 1980s and everybody knew that option existed. Y'all, I knocked on doors on Election Day 2020 and told five or six elderly Hispanic residents of my district who were terrified to walk into the polling place about that option. They had no idea it existed.

So that's the challenge I have for y'all. Don't stay in your silo only talking to the people who have been coming out to vote year after year. Talk to the people who aren't voting and ask them why. Ask what barriers they are facing. Because what I saw in the debate last night are members that are aware of those barriers and have talked to their constituents, who have faced them, and I saw members who have never had those conversations. And I guarantee you those people exist in your district. They exist in every single one of our districts. I'll give another example. In 2018, I talked to a woman over 65, permanently disabled and had no idea she could vote by mail in Texas. We assume that is baseline information. It is not. We have an obligation to make sure the ballot box is accessible to every single Texan. And I want y'all to talk to your constituents who are struggling so that you have a better understanding of what this means for the people you represent.

Today is Lyndon Baines Johnson's birthday—something that is particularly important to my district since he grew up on the west end of my district and was schooled in the other in San Marcos. Today, one of the greatest Texans, one of three Texans to ascend to the office of the presidency—he would be disappointed in us. The door is only open to this bill because the United States Supreme Court gutted the Voting Rights Act, one of his major accomplishments, in 2013—legislation that was renewed in a bipartisan fashion in 2006. Some of the same U.S. congressional members who voted to renew the Voting Rights Act are refusing to help reinstate its full strength now, and I am sad at the level of partisanship we are seeing around the right to vote. I don't want to ascribe motivations. So once again I will ask you. Please go talk to the people in your district who don't vote. Ask them why. Ask them what barriers they are facing. And then I believe you will see that myself and my other democratic colleagues who have been talking about how this impacts our constituents have been completely earnest this entire time. I urge you to vote against this bill.

REPRESENTATIVE WU: When we were in Washington, D.C., we got to meet with a lot of different people and we talked about why we were there and what we were trying to do. And over and over again we had members of our delegation say, we're here because we're worried about the ability of black and Hispanic communities to have their voices heard, to matter, to matter to this government. Because if you don't have a voice, then you don't exist. If you don't have the ability to vote, you don't matter, whether you live or die. And myself and my brother Vo over there, we're in the back saying don't forget the Asian American community. Don't forget us because this bill affects us, affects our communities,

as much if not more than black and Hispanic communities. And that's something that we don't talk about because Asian Americans are such a small part of the state's population.

But guess what? I know many of y'all have looked at the census numbers and you've seen what is coming on the horizon. You've seen the changes that are coming and you know something that I've repeated for a decade now, that the Asian American population is the fastest growing population in the state. We ain't big, but we're getting bigger. And many of you are from districts where you've seen this. You've seen your Asian American population grow and grow and grow. And that's why it hurts me when there are provisions in this bill that make it not only harder but directly criminalize and threaten the gains that my community has made. Because when people talk about oh, there's these nefarious people helping people at the polls, dragging them inside, making them vote—are you talking about me? Are you talking about what I did before being elected? Because I went out and drove Asian seniors. I drove busloads of Asian seniors, vanloads of Asian seniors, carloads of Asian seniors. I drove my parents. I drove my neighbors. I stood in front of polling locations. I walked in with people and assisted them, translated stuff for them, read stuff to them. Is that something that is despicable or something that should be praised? Something that we as Americans should applaud?

When my family became American citizens, including myself, when that day came, that was probably the singular most important day in our family's life. It is something that we cherish more than just about anything in this world other than our lives. And our family takes the right to vote that seriously because we know how hard it was to earn. Unlike many of you in here, we were not granted the right to vote by birth. Our family earned it. Our family earned it through years of struggle. And just as my family earned it, I know thousands of families in my neighborhood, in my district, in my community who earned that right, and they don't deserve to have more barriers placed in front of them. They don't deserve to have more hurdles and more people thrown in front of them after they spent all that time and effort earning the right to vote.

REPRESENTATIVE DOMINGUEZ: Members, have no doubts that I'm opposed to this bill, but I'm not opposed to the members that are in this room. I think a lot of words have been said today. A lot of words will be said later. And I think some of these words need to be recognition that this bill, in my opinion, improved. And we do need to recognize the efforts that were made by some who presented very good ideas to improve legislation. So I want to thank Chairman Murr for having conversations, for having the courage to think internally and evaluate positions even if he ultimately decided not to support those positions. To have that dialogue is what makes this body so different. This is not D.C. This is a time when we can get together and actually have meaningful discussion and debate. While I am not going to be happy and I will not champion this bill as a victory, what I will say is a victory is that we continue to have this dialogue, this relationship.

And I will applaud people like Chairwoman Klick when she provides an amendment that is what we all agree we need, better training for poll watchers—better training to make the entire election process smoother, one that

we can have confidence in. I know people have their doubts. I don't. I used to be a county commissioner and I know how these bipartisan election committees work. They work in unison because they know they need the bipartisan input to make the process work in their local communities. I want to thank members like Steve Allison who presented some great ideas and Briscoe Cain who had an amendment that really helps evaluate how we can help somebody who made an unintentional mistake.

So thank you, members, for being part of the process and letting us be part of this process, because we have had our reservations. And I know we didn't get everything that we wanted by a mile. I disagree with some provisions in this bill that I think specifically target large urban counties. I disagree with some of the efforts and the way that the language is still confusing. I'm still concerned someone is going to try to look over my shoulder and see who I'm voting for or take a picture of somebody at curbside voting who's getting assistance by a relative. I don't want their photo ending up on some social media site. I think there's a sanctity in the vote. I think we need to preserve that.

I need us to have an open mind to revisit this topic because, as my friend J.M. points out, in the area where I'm from not all that long ago people were prosecuted for voter fraud, for vote harvesting. That's a fact. That happened. I was there and I was ashamed. But what I can say is it wasn't a poll watcher that discovered this mistake, this crime. It was everyday people talking and finding things out. It was gumshoe investigative work by law enforcement that found the culprits, prosecuted them, and convicted them. And what's happened since then? Have we seen any more of that with the enhanced scrutiny in the Rio Grande Valley? We haven't. And the reason why we haven't is because the system works. It doesn't just work at the state level. When there's a federal candidate, the FBI gets involved, too. So they are also looking. And I guess that's what I'm trying to say here. We're trying to fix a system that wasn't broken. It's a system that works. So while we go into this next era with these changes that I think in many ways will discourage people from participating, I hope that we can continue this dialogue. Because Texas needs it.

I'm a first generation American. My mom, though, was a longtime resident. My whole life, she refused to become an American. And I asked her, well, why? She said, because the system—I just don't want to be part of the system. Until one day in 2001, after all the hanging chads in Florida, she decided to apply to become a citizen. And sure enough, within nine months she became a U.S. citizen for one reason—so she could vote. I know there are a lot more people like my mom out there. And she would be grateful to many of you who have been thoughtful, who have been patient and actually even listened to some of the discourse like right now. To my colleagues, thank you for continuing to work with us. We may have a respectful disagreement. We might not ever see eye to eye on this topic, but I'm glad that we can be close enough to have that discussion.

REPRESENTATIVE WALLE: Thank you to Chairman Murr for your advocacy yesterday. Although we disagree vehemently, I thank you for your advocacy, Chairman. I'm speaking against **SB 1** for many reasons, ladies and gentlemen.

I'm speaking against **SB 1** for many reasons, and one of those is that I couldn't sit in my chair without speaking on behalf of people like my 91-year-old grandfather, who recently died on Sunday surrounded by my mother who witnessed him take his last breath. And why I mention my 91-year-old grandfather is because he was born in 1930, ladies and gentlemen, and as many of you guys know who follow history, it was immediately after and during the Great Depression that he grew up, in a time in America, in a time in Texas, being a proud American of Mexican descent born in San Angelo, Texas. And the experience that he brought growing up in Texas at the time was tough. He lived through racism. He lived through discrimination. He lived through signs: "No dogs. No negroes. No Mexicans." And that was hurtful for him because he was a proud American. He didn't want to be three-fifths American. He didn't want to be half American. He didn't want to be one-fourth American. He wanted to be a whole American, and he wanted his country to treat him as such. And people like my grandfather—those silent warriors, Ms. T., those silent warriors that stood up and said no—stood up and said we're not taking this anymore. And they ushered in a new era in being able to pass the Voting Rights Act and the Civil Rights Act, crowning achievements of Lyndon Baines Johnson.

My grandfather, although he didn't have a formal education, he was a welder. He was a union steelworker and he also owned his own welding shop on Downs Lane in Northside, Houston, Texas, next to the railroad tracks. And I learned from him how to be a man. I learned from him that your word means something, that a handshake means something, that treating people with respect means something. And he was always proud, always proud. Not a man of a lot of words but he led by example. And so when folks would come in, ladies and gentlemen, to have my grandfather weld some product or weld something on their car, he was always a straight shooter with people. He was always somebody that I wanted to emulate because he was about building bridges. And here recently, trying to find photos to be able to honor him tomorrow at his funeral, we found some photos of my grandfather in the 1960s as a welder on top of the Sidney Sherman Houston Ship Channel Bridge. And it filled me with pride because he was about building bridges literally but also about building bridges figuratively and in society.

And what I take from him in that example, one example about building bridges is that when the United States passed the Voting Rights Act and the Civil Rights Act, that was about building bridges, about building bridges to a future. Because we had so many people in this society at the time that wanted to tear down those bridges, and people like my grandfather were about building bridges. So when we passed the Voting Rights Act and the Civil Rights Act, those bridges, those ramps to get on those bridges, were for people of color like him that had been rejected by society, that had been rejected for jobs, that were rejected at the lunch counter. They were rejected by society, by their own people.

So I come here today to tell you that **SB 1**, in my view, is not about building bridges. It leads to a road that will chip away at those bridges that we've built together. Together, ladies and gentlemen—black, white, Hispanic, Asian—we're about building bridges. And what this bill does is tear down those bridges that

we're trying to build together as a society whether you're a democrat or a republican. Because those of us that believe in democracy, those of us that left to go to D.C. to fight that front, we weren't just fighting a partisan battle. We were fighting for the soul of America. Because whether you like it or not, democrats are just as patriotic as anybody else. I love this country. I love this country, and sometimes it hasn't loved people like my grandfather back. We have made strides in this country, no question. We have made strides, but what we don't want to do is continue on a road that takes us backward. And so I am here today to tell you that.

I know the author of the bill, those that are proponents of the bill—I will not make blanket statements that your intent is nefarious. I'm not going to say that. I'm going to believe that the proponents of this bill are coming from a good place. But I will tell you this. The impact, at the end of the day, the impact of this bill is what's going to matter moving forward. I could not sit at my desk without having the honor, and normally, I do not do this. Normally, I don't talk about my family this way, and I don't speak against bills often. I think in my seven terms here, I try to respect people's opinion, respect their viewpoint. But I could not just sit at my desk and not rise up in honor of my father, my late grandfather who I considered a father because he took me in when I was young when my parents were having issues. I could not sit there and not tell him. As we were in D.C., I knew he was sick. I had a premonition that he was going to get sick, and lo and behold, he got sick. Because I talked about him a lot during our stay there, I could not sit there at my desk without standing up and fighting and speaking out for people like him. God bless you. I love you. I love you, Grandpa. I love you, Grandmother. And ladies and gentlemen, we need to be about building bridges.

REPRESENTATIVE LOZANO: Representative Walle really touched a chord and really touched my heart. I started remembering my grandfather, born in Guadalajara, Jalisco, Mexico. He came to this country as a migrant worker and he helped build highways and the bridges that Representative Walle talked about. Some of those highways were the highways that run right by this Capitol, I-35. And I don't know if he ever would have thought that, because this Capitol was here, when he'd look at it if he ever imagined that his grandson would one day serve in this chamber. My grandfather would bring my father with him and put him in school here when he was in this country for his visa, working. And that allowed my father to learn English, math, and science to a degree so high that he wanted to be a doctor. And he loved the United States so much that he said he wanted to be a doctor in the United States. And so when I was six months old, my father got an offer for a medical residency at Cook County Hospital in Chicago, the largest hospital in the country. My dad scored so high on his exams that they offered him a residency slot. I was six months old when we moved from Guadalajara, Jalisco to Chicago, Illinois.

My grandfather and my father have always said that this country has something unique that Mexico does not. In this country, the people rule. In Mexico, the rich rule. In this country, your vote truly counts. In Mexico, for over 80 years a party was in power and the people could do nothing about it. Mexico today has a voter ID with a thumbprint on it and an RFID chip embedded in it to

verify the identity of the person voting. Mexico has come a very long way. That party is no longer in power, a new party is. And so the parallels between what has happened in our neighboring country in terms of election fraud are pretty clear. But one of the things that was unique is that of the speakers that spoke against this bill, that some of them were from Dallas County. And yesterday, I cited article after article about voter fraud in Dallas County and no one ever mentioned that. They mentioned again that this was about the big lie. They never referred to the historical nature of our chamber in terms of addressing voter fraud. In fact, one of the speakers stopped at 1997.

Yesterday, I started with 2003 about the bill **HB 54** by Representative Wolens which required those to sign if they helped someone vote and how that signature has led to prosecutions in Dallas County. Let me go back a little bit because on December 19, 2000, there was an article in the *Wall Street Journal* titled "'Brokers' Exploit Absentee Voters; Elderly Are Top Targets for Fraud." Chairman of the Texas House Elections Committee Debra Danburg, a democrat, said in this *Wall Street Journal* article from December 19, 2000, that Debra Danburg was committed to strengthen her resolve to press for reforms in what we now call election integrity. In the committee hearings for **HB 54** in 2003, democrats in the committee said: Political parties and/or campaigns that mail out applications that have everything on it except for the signature might be something that is contributing to the widespread challenges that we are having. In discussing different methods of voter fraud, another democrat on the committee said, the reason why I'm asking these questions is because I'm trying to understand whether we are trying to get at all fraud or we are trying to get at a specific type of fraud or improprieties, Madam Chair. Because I think if we're going to do this, "let's do an omnibus. Let's omnibus this bill right now. I think Chairman Wolens has brought us a bill that we can build off of." I can read some more statements but I don't want to belabor that point, members.

Like as was mentioned before, this was a bipartisan effort. This should be a bipartisan effort now because there are documented cases of voter fraud as far back as this last 2020 election, but it's been happening year after year. I showed you yesterday how deceased people have somehow applied for a mail ballot. That's going on right now. This happened in 2020 in Houston. And I think the most powerful thing is that when people say that there was an amendment offered to create a study to see if whether or not this bill would have a disproportionate impact, I would tell you this. It's not needed. Because Chairman Wolens' bill, **HB 54**, passed in 2003. Some arguments were made on this house floor from the back mic that this would disenfranchise minorities, and it is empirically denied. Minorities have been voting in record numbers, higher numbers, every single year since 2003. And so this is building off of Chairman Wolens' bill. This is a very incredible effort after hours upon hours of testimony and research.

I truly believe that one of the most powerful things is that when people would testify, you really get that impact. But when I read another article last night that was from the *Dallas Morning News* from May 4, 2017, the title is "I Feel Violated." I feel violated. This senior citizen was told by the Dallas County Elections Department: Your signature appears on the mail-in ballot and a guy

named Jose Rodriguez signed it saying he helped you. The victim said, "I don't know a Jose Rodriguez. I'm angry. How are you just going to forge my name? That's wrong." I feel violated.

Our job here in this chamber is to fight for every single Texan. It's to make sure that we can have confidence in our election results and make sure that everyone's vote counts if it's cast legally, that everyone who votes verifies who they are before they vote, and that ultimately, members, that we can go back to the days when there was bipartisanship. Because this is common sense. Don't let Washington get in your heart. This is Texas. I ask you to support the bill.

REPRESENTATIVE S. THOMPSON: I'm happy you left me the last 30 minutes to talk—not really. I just want to remind you that if you think that we cannot see what's happening, it's clear what the efforts are of what's going on all across the United States. There's a collective right to vote under attack, and our democracy is under attack. We have a right as a citizen and that right is a constitutional right. The right is embedded in our Constitution that each one of us has a right to vote. I walked out of this chamber. I know some of y'all got po'd. I walked out, but I didn't walk off. I didn't walk off because I came back to take part in what was left of the discussion of this bill.

I remember poll taxes not just because my grandmother had to pay poll taxes because she was black. Poll taxes then were charged so that schools would be supported. It was not tied to the right to vote. And I remember very much the fact that she had to save up pennies and nickels. She couldn't afford to save quarters because she was only making \$2 a week. And she had to go a considerable distance to vote because she was black and there was no convenient polling place in our community where she could cast her vote. They dared not allow her to go to a white polling place because of her ethnicity. When I became of age to vote, I had to buy a poll tax to cast my vote. You know poll taxes became unconstitutional, but Texas did not get rid of the poll tax until 1966. My first grade classmate passed a law when she became a member of this body, Representative Alma Allen, to remove that from our Constitution.

You all are familiar—maybe you're not—that African Americans had to pass a literacy test. We used to have to talk about and count how many beans—guess how many beans were in a bag. That was part of the literacy test. It may be fun to some of you, but it wasn't fun to us. Because during that particular time, we had the right—a constitutional right in this country as an American not to be tested but to be able to cast our vote like everyone else. But it didn't happen.

I know that you talk about this bill and we have—I was on the committee. We heard the testimony the first time. We heard the testimony the second time. And I've heard people say that this bill does not have anything to do with top, side, or bottom denying people the right to vote. You know, I've heard that. But I also recognize when "souls to the polls" came out. You know, when we passed last session to let people be able to buy beer at 10 o'clock in the morning but you had to wait until 1 o'clock to vote. This was if you were in the African American community predominantly, because "souls to the polls" was not a white person's

thing. It was something that was akin to the black community because we left the church to go from the church to the polling place. And it was set off until 1 p.m. But since nobody knew why that got into the bill, it came out. Good.

But I believe that people who write these laws know how to put things in the laws. They know how to write it in such a way until it doesn't appear as though it has an impact or effect on a particular segment of our society. And it's really, in a sense, a bully's way of writing the laws. Because people have a right. We know democracy is that the majority rules. But we also have rules because they're supposed to be for liberty and justice for all.

We get bullied all the time. I got bullied once, several times. And you all know why I can be a little bitchy? It's because of the fact that I have learned since I was two years old that I had to be a little warrior. If I didn't want my rear kicked by somebody or always being picked on, I had to be able to stand up and fight back. That's why I have always believed that there are good things in people but every now and then, when the little bulliness comes out, there's a necessity to stand up and fight back. The only thing I want to remind you of is this. Although you did not allow us, some of us, minor changes—you largely did what you wanted in this bill. You kept changing the bill in the dark, and you backed off agreements that we had from time to time that you made with some of us. But make no mistake. This is your bill, your idea, and you will be responsible for the consequences.

And ladies and gentlemen, today is the birthday of Lyndon Baines Johnson. We have asked for years to give us the ballot. We have asked for it to be inclusive. I'm asking you today, when are you going to allow all of us to be counted as Americans? To be able to take the Constitution, as some of you are able to do, take so much for granted? And if you think that you're winning today by the things that you have put in this bill, let me give you a prophetic statement: You will reap what you sow. And you know what? It won't be years or decades from now. It'll be sooner than you think.

MURR: I yield for questions.

REPRESENTATIVE DUTTON: Let me again thank you for meeting with me. I think I've said that before, but I want to say it again. Let me ask you this, though. Do you think there's fraud in Texas elections?

MURR: I would respond to a statement like that to say, generally speaking, I think that there is always a likelihood of fraud, and looking in the past, we have seen past examples of fraud.

DUTTON: Well, to some extent that means that some of us are here fraudulently.

MURR: I would not necessarily reach that conclusion.

DUTTON: Well, if there's fraud in the elections, fraud doesn't generally help the losers, does it?

MURR: I'm really not advised to how to answer that.

DUTTON: All right. Well, fraud generally helps the winners. I play cards. I played poker with a friend of mine who I taught him how to play poker, and then he wanted to play for money. And I told him, you don't play cards with somebody who taught you for money. He insisted on it. So I said, okay, let's play. I cheated every hand. He didn't win. Out of 15 hands, he didn't win. Now, for me, you know, the fraud that I was engaging in was because I was trying to teach him a lesson. But today, one of the things that bothers me about this bill is that, for example, in your county, I think you indicated that you all—the counties have a holiday on voting day. Is that right?

MURR: Generally speaking, it is a county holiday. That is correct.

DUTTON: Under what law do they make it a holiday? Because I looked and I tried to figure out where the counties can do that.

MURR: The counties have the authority, as I understand it, to set their own holiday schedule. And so typically, each year a commissioners court will meet and determine which holidays they will grant for county employees.

DUTTON: All right, so Harris County could decide tomorrow to have a county holiday for Election Day. Is that right?

MURR: I would conclude that they have the authority to do that, yes.

DUTTON: Okay, thank you. So if one of the reasons we were doing this bill was to make things uniform, how would that be uniform if out of the 254 counties you've got one county or two counties or three counties making it a holiday on Election Day?

MURR: I think that speaks to the ultimate purpose of having a holiday. The purpose of having a holiday is to allow the opportunity for voters to go vote. This legislation provides protections for employees to take off work from their employer to go vote during early voting. Current Texas law provides the same protection on Election Day, and we afford them an abundant amount of time to early vote. We set expansive hours to do so. And they can also consider voting by mail. So if you're speaking to the purpose of a holiday, I don't know, with all of those concepts being considered in this legislation or already in Texas law, that that is necessary.

DUTTON: So effectively, you're saying they could already do that.

MURR: The authority to have a holiday is available at the local level.

DUTTON: So not the city but the county could actually—

MURR: I'm not advised as to whether a municipality could also declare that to be a holiday. Now, when they do so, we're speaking of a holiday in terms of employees, so for counties that would be county employees and for a city that would be municipal employees. That doesn't necessarily extend to the general public. Obviously, each business gets to determine its own schedule.

DUTTON: Now, the elections in Texas—would you agree with me, first, that generally, like when I was playing the card game, that winners are generally the ones that engage in cheating? People that are losing generally are not the ones cheating.

MURR: Chairman Dutton, I really don't play cards.

DUTTON: Okay, that's acceptable. I don't play very good myself, so I should probably join you. But what I'm getting at is for the last 20 years or so, two decades, has one party been winning the elections over the other one?

MURR: It depends on the jurisdiction. If you're talking statewide politics, you're going to get one answer. If you're talking by region, you're going to get a different answer. And if you're talking about nonpartisan elections, which this bill also affects and provides guidance for school boards, municipalities, and other local districts, those don't have partisan elections.

DUTTON: Right, so let's take that apart. The statewide elections for the last two decades have been won by republicans. Is that right?

MURR: At the statewide level, that would be a correct conclusion.

DUTTON: Do you think the fraud is at the state level?

MURR: Mr. Dutton, I have never said that fraud was a condition precedent for Texas to implement additional policy to protect against fraud.

DUTTON: But the election integrity and looking at the bill—looking at the intent in the bill which is in there—it would suggest that there must be some fraud occurring in Texas elections.

MURR: It specifically states to reduce the likelihood of fraud.

DUTTON: Right. Now, why would you be reducing the likelihood of it if it didn't exist?

MURR: Inherently with any election system, we want Texans to be confident in the outcome of the system.

DUTTON: I will agree with you. I think that's the best thing for everybody, for every party, for every candidate to make sure that there's no fraud in the elections. What I'm getting at is that I'm trying to figure out if the fraud is not at the state level, do you think it's more representative of county elections then?

MURR: During the hours of testimony from witnesses on this legislation both in the first called session and the second called session, we heard witnesses give their perspective on races at the local level and it always hits home for individuals. So it doesn't necessarily have to be a high profile race. The example you give is statewide races. It could be the local school board race or the local race for a city council seat or for a special district. It seems that when it's in your neighborhood, that's where you want a reliable system because they know the people that are involved, they know the voters, and they want to participate in the process. So at the end of the day, the witnesses provided perspective for all types of races, not just statewide races or some type of regional races or as you say at the county level. It was for all races within the political process.

DUTTON: Did you find out what state representative represented that person who was testifying?

MURR: Did I go and find out who the state representative was?

DUTTON: I was just wondering if they told you or something.

MURR: I don't recall that level of detail.

DUTTON: Okay, because I'd just be curious as to whether or not they were talking about a particular state representative race. Well, let me just say this. I've been in this legislature 19 sessions now. And one of the things I found out or realized when I first came—I was asking my dad about what to do, and he said, "Well, I can't tell you what to do, but do what's right." I called him back one day and I said, "I found out, Dad, they got about eight or nine or 10 things that are right down here to do." But the one thing I have realized is that if one party—and when I came here there were 95 democrats in the house. I will tell you, I had some of the greatest fights even with democrats when I sat here because I don't think that Texas is served better when one party—not only if they rule, but if a bill comes up that only that party supports, that generally is not right. That generally falls out of the eight or nine right things to do because they tend to be more political than right.

The biggest example I can give you for this bill was when I had the amendment on letting it be a state holiday or a county holiday or a city holiday. You objected to that. Yet that's the same thing that happens in your area. And I don't understand how if it's good in the area that Murr represents, why wouldn't it be good for the area that Ms. Perez represents? Why wouldn't it be good for the area that Ms. Hull represents? Why wouldn't it be good for just anybody's district? The point that I'm making is that the other statistics I showed you was that Texas is fifth from the bottom in terms of voter turnout in this nation. That's a shame. We should put that as high as we put election integrity. I don't know why we haven't done that. I assume somebody came to you and said we needed to do this, but did you ever think about trying to improve on the stats related to Texas voter participation?

MURR: First, Mr. Dutton, your father gives good advice. Second, I have not reviewed the statistics that you mentioned yesterday and today, but I certainly do believe and every member on the floor believes that we all strive for improvement. And I believe that that is what we're looking at today with this legislation. It's improving the Election Code in Texas.

DUTTON: Thank you for answering my questions. I will leave you with this, and I think Representative Thompson mentioned it a little bit. In the Bible, there's a story about a man who built the gallows for another man. And I think you know the rest of the story. The one thing about it is we're going to go vote, and so we'll see you at the polls.

[SB 1 was passed by Record No. 61.]

CSHB 20 DEBATE - SECOND READING
(by Cain, White, Burrows, Metcalf, Shaheen, et. al.)

CSHB 20, A bill to be An Act relating to censorship of or certain other interference with digital expression, including expression on social media platforms or through electronic mail messages.

REPRESENTATIVE CAIN: In 2017, Justice Kennedy in *Packingham v. North Carolina*, in an opinion joined by several members of the court, referred to social media sites as "the modern public square." They acknowledge that these few dominant websites "for many are the principal sources for knowing current events, checking ads for employment, speaking, and listening." Justice Kennedy called them "perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard." In an April 2021 case, in *Knight Institute v. Trump*, Justice Clarence Thomas in a concurrence chimed in that he believes that technology platforms like Twitter may probably be regulated as common carriers like the phone system or places of public accommodation like a retail store or movie theater. In his concurrence, he suggested that common carriage regulation for social media platforms might be appropriate given the historically unprecedented "concentrated control of so much speech in the hands of a few parties." Moreover, Elizabeth Warren—who many would, you know, not consider to be a conservative mind like Justice Thomas—she has criticized Facebook for removing her ads when she was running for president. To quote, "We must ensure that today's tech giants do not . . . wield so much power that they can undermine our democracy."

At this point, a small handful of social media sites drive the national narrative and have massive influence over the progress and developments of medicine and science, social justice movements, election outcomes, and public thought. **CSHB 20** has three parts. The first demands some transparency out of the social media platforms. The second part of the bill allows people who have been censored for their viewpoints to get back online. And the third part pertains to e-mails. With that, I believe we have an amendment, though.

REPRESENTATIVE WU: Representative Cain, was there a fiscal note on this bill? I'm sorry, is the mic not coming through?

CAIN: I'm sure there's a fiscal note, yeah.

WU: Did you have a chance to look at it?

CAIN: I'm assuming there's no fiscal impact. Is that the answer?

WU: Do you know or are you guessing?

CAIN: Why don't you tell me? I'm getting it right here.

WU: There you go.

CAIN: Yes, no significant fiscal impact.

WU: There's no fiscal impact. Do you know—when they did the fiscal note, did you talk to them about taking into consideration that this is going to get the state sued pretty much immediately?

CAIN: You know, I've never really talked to them about fiscal notes. We request them and they deliver. Have you ever talked to them about things when you ask for fiscal notes?

WU: Do you know that this same type of legislation has been filed around in the nation in other states, including recently in Florida, and they've been immediately dragged into court about the unconstitutionality about this type of legislation?

CAIN: Yeah, I'm glad you asked about the Florida case because the way we drafted this bill as opposed to the regular session was intentionally looking at Florida to see how we could do ours properly. One of the differences primarily in the Florida bill, because I'm glad you asked about it, is Florida's bill specifically prohibited social media platforms from banning candidates from their platform and required social media platforms to apply standards on users equally. A funny one—Florida's bill exempted Disney. We make no such exemptions. The law, by the way, for the candidates would've fined the social media platforms \$250,000 a day for banning candidates for statewide office and \$25,000 for candidates for lower office. We don't do that.

WU: Mr. Cain, do you understand that the Florida court never even bothered to go to those points because they say that it was so unconstitutional on its face that they didn't even have to even get to those points at all? That this was a First Amendment violation of the most basic nature?

CAIN: Well, you know, the case is being appealed. I think you know how appeals go from district courts.

WU: Can I ask you, why did you limit this bill? Why did you put the limit at 50 million active users?

CAIN: That's a good question.

WU: Could you explain it?

CAIN: Well, you know, we wanted to protect users of the largest those large enough to be considered, you know, the public square—things that, I believe, are akin to common carriers. You know, during the committee hearing, I was asked this question exactly. They had asked why we were targeting several platforms that I had never heard of. You know, I'm pretty active on social media, but I'd say if I hadn't heard of it, you know, it's probably not considered a public square.

WU: So you're saying that a 50 million user limit would only target the largest correct?

CAIN: Yeah, those considered the public square, those that are getting to the point of quasi-common carriers, things of appearance of public accommodation. That's correct.

WU: Do you know how many Facebook users there are?

CAIN: I've seen some numbers. I bet you've got a list. Do you want to tell me?

WU: Oh, I do.

CAIN: Yeah, go ahead.

WU: You're the bill author. I'm just trying to see if you know. Would it surprise you that there are almost three billion Facebook users? That's quite a bit of ways from 50 million. Would that be fair?

CAIN: Yeah, we're at 50 million for within the U.S. actively in a month. That's the way this is drafted.

WU: Do you know how many YouTube has?

CAIN: I don't know—126 million?

WU: Do you know how many Instagram users there are?

CAIN: I mean, I've got a list, Wu. Let's see. It would be, you know, faster if you'd just tell the body—121 million.

WU: Do you know that there are other platforms in the U.S. that Americans have access to other than those that are not based in the United States?

CAIN: I'm sure there are, but I don't think people would consider those the public square where ideas are debated and they can get their voice out to the broadest audience. If they were, we'd be using them.

WU: You may not be using it but there's plenty of people in America who use platforms like WeChat.

CAIN: Like what?

WU: Like WeChat.

CAIN: WeChat?

WU: Have you ever heard of it?

CAIN: Are you on WeChat?

WU: I am.

CAIN: Okay. Never heard of it.

WU: You know WeChat has 1.2 billion users?

CAIN: Okay.

WU: Were you intending to include them into this?

CAIN: If they have over 50 million active users in a month, then they're included in it. We were not targeting any specific companies. We were only targeting those large enough to be considered the public square.

WU: Why not 20 million users then?

CAIN: I don't think those would be considered large enough. Look, when we talked to people about where this threshold should be, this is the number they arrived on.

WU: Why not 30 million users?

CAIN: Because at that point, I don't think they're large enough to be considered the public square. These are similar concepts of antitrust monopoly.

WU: Why not any platform? Why does it have to have a certain number of users? Why can't it be any platform? If your concern is the public square is being silenced, if your concern is about public debate, why shouldn't any platform with any amount of users have to comply with this?

CAIN: That's a great question. There's a few reasons. One of them I'll address is not all platforms hold themselves out universally as places of—kind of like places of public accommodation where they take all and they're for everybody. And also, again, the size here—I was about to say size matters. Here, size matters. These are places for, again, the public accommodation that hold themselves up for everybody, and they're the platforms where people go to have their voices heard. These are similar reasons for these concepts of common carriage.

WU: Is there a data-driven reason of why 50 million is the cutoff?

CAIN: It's based on a decision of how large that would be.

WU: Whose decision?

CAIN: In consultation with the senate and other people we talked to in consultation about how this bill should be written and in such a way to make it narrow enough to survive challenge.

WU: So you picked a number out of a hat?

CAIN: No, we consulted with people. I'm sorry they're not here to be witnesses for you.

WU: What data did they provide?

CAIN: We'd have to talk to them about that.

WU: Didn't you just say you talked to them?

CAIN: Yes.

WU: Why in your bill do you provide protections for people who send spam e-mails?

CAIN: Okay. So we're now in Chapter, I guess, 321 of the Business and Commerce Code. I don't know what you mean by protection for people that send spam e-mails.

WU: The code section that you're modifying in there is about providing penalties for people who are sending spam and unrequested telemarketing e-mails. And you're saying that if a company blocks e-mails, they're under the same provisions.

CAIN: No. We're amending that because that's where it fits. This section of code was enacted in response to the CAN-SPAM Act. We give these providers the ability to block unsolicited commercial e-mails and we have fines for that and other commercial electronic mails. We will also allow them to stop things that are obscene and sexual conduct.

WU: So in a bill that is about protecting the public square, you're now dealing with communications between individual to individual.

CAIN: No, this has to do with censorship and to stop censorship through electronic means.

WU: So if Google sets up—for my Gmail—sets up a spam filter that they prevent me receiving e-mails, now what this bill provides is an ability for those spammers to sue Google and to bring them into court.

CAIN: I don't think so. That'd be a filter you set up.

WU: That's what it says in your bill.

CAIN: This has to do with them intentionally going after the content of something. So if you'll read it, it says—

WU: Google is filtering out these e-mails because of their content.

CAIN: Okay. We're not stopping anybody from using filters. The point is without your asking. That door's left open for you to do it. It's on their own accord.

WU: I've never asked Google to filter my e-mails. They just do it.

CAIN: Well, in this there are things that they can filter out. You can see it. It has to do with obscenity, pornography, commercial e-mails, anything advertising for sale or offering goods. That's what this Act was designed for.

WU: So if someone sends out commercial spam and it gets filtered and it gets blocked, this legislation would now give them the ability to go after the e-mail provider?

CAIN: No.

WU: That's the way it reads to me.

CAIN: Okay. Well, it doesn't do that. It's literally the exception in the code. You may have to pull up Chapter 321 of the Business and Commerce Code.

WU: I have it right here.

CAIN: Okay.

WU: Let me ask you a little bit more about the bill. You can go back to, I guess, the second page. In your legislation, on page 2, starting on line 21, you said this chapter only applies "to a user who resides in this state." Is there a time requirement for that residency?

CAIN: I guess that'd be left open for a court to interpret it. It requires that you reside in the state.

WU: Why doesn't your bill define what residence means?

CAIN: I think we understand that it means that you live here. It's going to be based on a reasonable interpretation of that term.

WU: And it says that a user has to do "business in this state." What counts as doing business in this state?

CAIN: I have a feeling it'd probably—you know, I don't know if it's going to require brick and mortar, but it's going to be some kind of situs, meaning that they're present in this state doing business.

WU: In Subsection (3), on line 25, it says that the user must share or receive "content on a social media platform in this state."

CAIN: Okay.

WU: Does that mean that the content has to be about the state?

CAIN: No. It's just like if you were to pull your phone out and open up one of your social media apps, you'd be sharing or receiving content in this state.

WU: So if a person lives in this state but they go out of state and they see a post, does that count?

CAIN: You're in Chapter 120 right now and this part of the bill has to do with the social media platforms—what I, you know, believe are akin to or acting as common carriers—to have certain disclosure requirements and an acceptable use policy and a biannual transparency report.

WU: I'm looking at your bill. I'm trying to see applicability of this chapter. I'm trying to figure out how this chapter applies to someone, who it applies to.

CAIN: Yeah. Well, the enforcement of this chapter—

WU: It says "shares or receives content on a social media platform in this state." Is the social media platform itself in this state?

CAIN: No, of course not. It's going to be on the common and ordinary understanding of the word—

WU: Do they have to be in the state when they receive the content?

CAIN: This has to do with censoring a user's content, so it's not really as much about whether they're receiving content.

WU: The point of this section is to tell who gets to use this law. We're not even to what's being censored yet.

CAIN: The enforcement of this section—

WU: Who gets to use this law?

CAIN: The enforcement of this section is only by the attorney general and this section has nothing to do with censorship.

WU: Okay. When it happens to someone, the attorney general gets to enforce it, correct?

CAIN: That would be under Section 143A. It's another section of the bill.

WU: Okay.

CAIN: This portion of the bill is purely—

WU: This bill provides when this law is applicable. Is that correct?

CAIN: Which part?

WU: The part we're talking about right now. It says when this law is applicable. Is that not right?

CAIN: That's "Applicability Of Chapter." That's Chapter 120.

WU: There you go.

CAIN: So for applicability of Chapter 143A, you go to the applicability of that one. That's where the private cause of action is, in another section.

WU: What I'm trying to get at is, what my question is—I'm trying to understand when this is actually applicable. It says when a user "shares or receives content on a social media platform in this state." Is it when the user and the content is in the state? Would they have to be physically in the state or do they need to just be a resident? Can they be a nonresident who gets the content while they're physically in the state?

CAIN: So in order to be a user under this, you've got to reside in the state, do business in the state, or share and receive content. Gives you some "ors." What this chapter does, though—of 120—is we're going to require them to do some public disclosures. The reason for that, though, is it's got to "be sufficient to enable users to make an informed choice" about the platform.

WU: I'm sorry. I'm not asking about what the bill requires once it's applicable.

CAIN: I just thought you should know.

WU: I'm asking you to tell me when it's applicable.

CAIN: It's applicable—literally, it says it, Representative Wu.

WU: Well, I think by the very definition that you've provided, that it is not clear when it is applicable.

CAIN: Okay. Well, I mean, I think courts will interpret it that it's applicable the way it's written in a common understanding.

WU: So we are just going to leave it to the courts because you have no intention of this actually being carried out.

CAIN: No, I think it's plain on its face what it means and you can read something else into that. That's okay.

WU: On the next page, on page 3, it says that a social media platform has to disclose all information regarding (1), (2), (3), (4), and (5).

CAIN: Yeah.

WU: How they do searches, how they curate, how they promote things, how they provide content to users—those are all part of social media platforms. That's a part of their algorithm. Would that be fair? Do you understand that?

CAIN: Well, to be clear, if I think where you're maybe going, if you'll go up to Section 120.003, it's very clear that "this chapter may not be construed to limit or expand intellectual property law." Meaning, whatever this public disclosure does mean, it cannot be read to imply that they must disclose some form of IP. So it can be something as simple as saying we use an algorithm to determine how content is displayed to you. It's not asking you to reveal how you determine that algorithm.

WU: To be clear, your legislation does not require them to disclose anything that they say is confidential?

CAIN: It does not affect or expand or limit intellectual property law.

WU: I know of no platform that would say that their algorithm is for public consumption. So you're providing a legislation that tells them to provide things that they don't have to provide at all.

CAIN: Again, it requires that you can't expand or limit intellectual property law. So if that answer is something that would require them to reveal their IP, then they don't have to.

WU: Can I ask you, do you block anybody? Do you block any users on Facebook or Twitter?

CAIN: Yes, as a private person we're all allowed to do that. In fact, that's a great question. One of the main things that this bill leaves open—in fact, we even say that you can do it. If you go to page 13 regarding 143A, page 13, line 8: "This chapter may not be construed to prohibit or restrict a social media platform from authorizing or facilitating a user's ability to censor specific expression on the user's platform or page at the request of that user." The point is it allows users to cater what they want to see. You may or some may say, well, I don't like seeing those posts. And people are always free to regulate the content of their page to what they see. So if you don't want to see something, you can block it or mute it or you know.

WU: Do you understand that on page 11, in your "Censorship Prohibited" section, you specifically say that you can't block a user from seeing someone else's expression? It says specifically: "A social media platform may not censor a user, a user's expression, or a user's ability to receive the expression of another person." By you blocking someone else—

CAIN: There's an amendment that removes that definition out of "censor" due to some ambiguities and some issues that were raised in committee that alerted it to us. However, this is about the action by these large social media companies that are as the public square. A private user is not acting as a social media company.

WU: But it's a social media company that's doing the blocking. It's their platform and their code that allows you to block someone else.

CAIN: Well, if you read the exception I just read you there on page 13, it literally says this cannot be construed to prevent a social media company from authorizing somebody to, and to paraphrase, to block someone. So that'd be an improper reading of that.

WU: So it's legislation that requires them to not block somebody, but if they did, there's nothing you can do about it?

CAIN: No, what this legislation actually does, in 143A.002, is it prohibits censorship of viewpoint.

WU: Do you think that the State of Texas, the legislature, has the ability to affect companies that do not reside in this state?

CAIN: I mean, they do business in this state. Why couldn't we?

WU: Who?

CAIN: A company doing business in this state. I don't know. Facebook and Twitter, they do business here.

WU: They have a physical presence here?

CAIN: They have some buildings in downtown Austin, yeah.

WU: What about the other companies? What about the other companies that have over 50 million users in the United States and this state?

CAIN: Well, I guess they do business here. Their products are available on our phones.

WU: What about the ones who don't have a physical presence here?

CAIN: Look, they market their product and hold open their product to Texans, people that reside here. I think they're doing business here.

WU: So a user going to their website is them reaching out?

CAIN: I mean, they advertise and they want people. I mean, the more users they have, the more value.

WU: They advertise on the Internet. Is advertising on the Internet reaching out? Is that what counts as reaching out?

CAIN: I think they do business here, Mr. Wu. If you'd like to educate me on what that means, I'm sure the body would like to hear it.

WU: Do you know if the State of Texas has the ability to regulate telecom?

CAIN: We do regulate telecommunications companies.

WU: Your legislation, as you have described it, is your intent to protect the First Amendment, correct?

CAIN: It's to protect concepts of free speech that reside in that, yeah.

WU: Do these companies have a right to their First Amendment?

CAIN: They do. That's a great question because, you know, for example, FedEx—a common carrier—you know, when they ship a book, if it contains speech that they disagree with, they're not able to refuse. I don't think we're interfering with their speech rights. They speak all the time. They speak through their platforms. They speak in media. But carrying speech does not count as their speech.

WU: Are these companies a common carrier because you say they are a common carrier?

CAIN: Well, there's common carrier common law and there's legislation that defines people as common carriers, that's correct.

WU: So they're a common carrier because you say they are?

CAIN: We're saying they are.

WU: Okay. Legally, have they been designated as a common carrier?

CAIN: By who? No one's—

WU: By the courts? By the federal government?

CAIN: The federal government has not regulated or said so yet.

WU: Okay. So you're applying all these rules to them when no court has ever defined a social media platform or a website as a common carrier?

CAIN: I think they could be considered quasi-common carriers.

WU: You would like for them to be a common carrier.

CAIN: Well, I began by quoting the great Justice Clarence Thomas who believes they're common carriers.

WU: Is that law?

CAIN: It was a concurring opinion, but we often know how concurring opinions eventually continue to find their way into the majority when the ideas change. I think it's something we've continued to struggle with on how to look at something of this size and regulate it as a common carrier.

WU: So you're saying in this legislation that your right to say whatever you want is more important than the right of these private companies to regulate the speech that comes out of their own platform, out of their servers, out of their property?

CAIN: Look, while I recognize that these, you know, these large tech firms are privately held, I remind you the U.S. Supreme Court has on a few occasions under certain circumstances held that citizens have speech rights on private property. Are you familiar with *Marsh v. Alabama*? It's a 1946 case that deals with a company-owned town where the court said that that person had the right to distribute literature on a company-owned sidewalk.

WU: Are people forced to be on these websites?

CAIN: I don't think that that man in *Marsh v. Alabama* was forced to be there, but the reason they were able to treat him that way is because that town, that locality, freely was open and freely used by the public. Another one is *PruneYard Shopping Center v. Robins*. It's a 1980 U.S. Supreme Court case dealing with a private shopping center that held itself out and was open to the public at large. They were also found not to be able to exclude the free speech rights of private citizens on private property. I could give you a quote, if you'd like. It's: "The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the . . . constitutional rights of those who use it."

WU: Under those cases, they said those owners have a—there's a certain limitation in the people's ability to speech. They can't just go in there and start shouting obscenities. They can't just go in there and start, like, stripping off their clothes. They can't go in there just yelling hate speech or anything like that, right?

CAIN: Yeah, under—

WU: So when these social media companies do exactly the same thing—they limit what people can say on their own property—you're saying, "No, you can't."

CAIN: No, that's not at all what we're saying. This has to do with viewpoint censorship. Section 230 kind of preempts our ability to regulate content. Have a good day, Mr. Wu.

[Amendment No. 1 by Cain was laid before the house.]

CAIN: So this amendment moves the definition of "malicious computer code" into a more proper section of the code. It also strikes the language that Representative Wu was asking about under the definition of "censor" to remove any ambiguity that you do not have the right to sue on behalf of someone else that was censored.

[Amendment No. 1 was adopted.]

[Amendment No. 2 by Biedermann was laid before the house.]

REPRESENTATIVE BIEDERMANN: Again, we're talking about free speech. And this bill is mainly for those citizens in the State of Texas, but I just want to prove a point here. We have a president of the United States right now that's censored. So if we have a president of the United States that's censored, what could happen to every citizen in the State of Texas? We have right now the Taliban. We have Black Lives Matter. We have ISIS. We have all these groups that can say whatever they want, and they aren't censored. But yet we have a president of the United States that is censored right now. This bill is so important and so necessary, and it's a travesty that we would allow this in a country where 60 million people voted for a candidate, an elected official, and yet that person is censored by these social media giants and companies. So I just am thankful for this bill. I thank you, Representative Cain. We need this bill to protect the social media sites from discriminating or silencing against certain viewpoints. I just hope that this would be an example of how important this legislation is and how far we've gone in this country to allow this type of discrimination and prohibition of free speech to happen. I'm going to pull down my amendment, and I thank you for this bill.

[Amendment No. 2 was withdrawn.]

[Amendment No. 3 by Howard was laid before the house.]

REPRESENTATIVE HOWARD: So I know y'all all know that I am a nurse and that I have a background also in public health and have been a champion of vaccinations even before this pandemic. Under **CSHB 20**, a user who posts content that promotes vaccine misinformation will be able to sue a social media company if the social media removed their post. My amendment would allow social media websites to remove content that "directly or indirectly promotes or supports vaccine misinformation." During the House State Affairs hearing on the companion bill to **SB 12**, which was **HB 2587**, several anti-vaccine activists testified against this bill because they want figures like Robert F. Kennedy Jr. to be able to spread vaccine misinformation freely instead of being removed by

online platforms for violating their policies. Unfortunately, this has real consequences for public health as we are witnessing every day now with COVID cases clogging the hospitals and lives being upended.

This is all the more troubling when looking at some of the studies that have looked at the influence of these platforms. The Annenberg Public Policy Center of the University of Pennsylvania found that "people who rely on social media for information will be more likely to be misinformed about vaccines than those who rely on traditional media . . . The study, based on surveys of nearly 2,500 U.S. adults, found that up to 20 percent of respondents were at least somewhat misinformed about vaccines." This amendment would allow these influential platforms to continue to exercise their First Amendment rights to remove this specific type of misinformation and hopefully support our shared goal of improved public health and getting past this deadly pandemic.

CAIN: I understand what Representative Howard is trying to do here. By the way, this bill again, though, prohibits censorship of viewpoint and not content. And it may be important to remind y'all that Chapter 47 U.S.C. Section 230—you may have heard of Section 230 in the news a lot in the last few years, that's the Communications Decency Act—it already empowers these companies to remove or regulate content of speech. In fact, I would say that this, the way this is written, aims toward content. So I'll give you an idea. It says: "No provider or user of an interactive computer service shall be held liable on account of any action voluntarily taken in good faith to restrict access to . . . the material that the provider considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable."

I'd also like to point out a really, really important one. In 2018, Twitter said, "We acknowledge the growing concern people have of the power held by companies like Twitter. We believe it's dangerous to ask Twitter to regulate opinions or be the arbiter of truth." They are still completely free to do what they are doing now where they add things to it and say this could be misleading, as you may have seen, Representative Howard. You'll see on Twitter when somebody's talking about COVID, anytime you see those words, they've got algorithms that bring that up and they put "click here for more information." So they're certainly free to do exactly that. This bill does not stop them from giving context to or giving disagreement.

REPRESENTATIVE C. TURNER: So you just outlined some reasons there why you are going to oppose Representative Howard's amendment in that you cited something Twitter said about not policing opinions or certain viewpoints. I'm paraphrasing there. But I think what Representative Howard's amendment is seeking to address is not opinions or viewpoints that we may disagree with but flat-out false information that sometimes unfortunately runs rampant on these social media sites where you'll have people who are posting false information about vaccine efficacy and safety. And obviously, it is a huge issue right now with respect to the COVID-19 pandemic and the high degree of vaccine hesitancy we are seeing. And one question I have is why would you not accept an amendment as it relates to COVID-19—false information about COVID-19 vaccines which are proven to be safe and effective and are approved

by the FDA? But it's also about other vaccines, too, isn't it? I mean, we've had an increasing problem with vaccine hesitancy for the last two decades in this country, have we not? And more and more we're seeing schoolkids not vaccinated against mumps, measles, rubella, whooping cough, diphtheria, and other serious illnesses that threaten the health and safety of young people—and in the case of COVID-19, young people as well as older people. So why would you oppose an amendment that simply seeks to protect the health of Texans?

CAIN: Well, I don't think we want, in my opinion, we don't want these companies being the arbiter of truth. Look, if a social media site finds—

C. TURNER: The arbiter of truth? I mean, isn't it true that vaccines save lives?

CAIN: Look, if they find it to be false, we don't stop them from flagging it or adding facts. That's actually another difference between this bill and the Florida bill. The Florida bill was telling them how they could do it. They were treating that as censorship. We don't do that at all. They can certainly do so.

C. TURNER: If someone posts that a vaccine is dangerous and therefore you should not take it, do you think that is a false statement?

CAIN: Yes.

C. TURNER: So if it's a false statement, and I agree with you, why would a private company not have the ability to remove a demonstrably false statement from its website?

CAIN: Because I believe under the circumstance they are the public square, and the free exchange of ideas and information and debate of why that information—

C. TURNER: It's not an idea or information. It's false information.

CAIN: It is, but if it wasn't for that information, then people wouldn't be saying what you're saying right now to counter it. It wouldn't have the information. It wouldn't have challenged our ideas, and we need exactly that. In fact, that's why Section 230 even exists. I mean, that's the policy statement and the legislative findings behind the Act. One of the purposes of it is to increase the variety of educational, political, cultural, entertainment services. It was to allow for literally—and I'll quote for you—to "offer a forum for a true diversity of political discourse." That's why 230 is there.

C. TURNER: The well-established standard on free speech that everyone knows, that you can't go run into a crowded theater and shout fire—you've heard that, right?

CAIN: Yes.

C. TURNER: Okay. You would agree that standard is—

CAIN: That is unprotected speech at this moment due to the exact circumstance—

C. TURNER: Right. So why should a private company—we shouldn't even be trying to police their free speech to begin with—but why should a private company be told that someone can go on their platform, their private platform,

and post information that may well cost someone's life by giving them false information about the efficacy and the safety of lifesaving vaccines? How is that any different?

CAIN: Do you have any examples of any of these platforms literally blocking or deleting posts like that? Because from what I've seen, they're doing exactly what I'm telling you they do, which is where they add context or some fact-checker says something is false but they don't take it down. And this bill doesn't affect that at all.

C. TURNER: My understanding is that they have policed that content and there is real concern that your bill will interfere with their ability to do that. And that's why Representative Howard has brought this amendment, so I hope you will reconsider your opposition.

CAIN: It does not prevent them from doing exactly what I've told you it allows them to do. They can still put little things underneath it that says they believe this is false or they disagree with the statement. They can always also, as they do in their end-user agreement, disclaim any agreement with anything anybody posts. Thank you. Members, please vote no.

HOWARD: I mean, clearly, this is a situation where you have things that can be put on social media platforms that talk about, for instance, the "Tide Pod Challenge," if y'all remember that. We want to make sure that they can remove information that could result in hurting our kids. That was a classic example of misinformation being out there. In this case, we're talking specifically about vaccines. And we know that the vaccine hesitancy is resulting in fewer people getting the vaccines than we need to have herd immunity to prevent the spread of the delta variant and other variants that are forming at this time. The more we get people vaccinated, the more we will prevent that from happening. And when we have misinformation on the Internet and people getting their information there and questioning the validity of the science, that's detrimental to the public health of Texans.

REPRESENTATIVE SANFORD: Representative Howard, do you recall when Facebook had to backtrack in May of this year on prior censorship that they were engaged in? The area of the virus, the question of its origin that they had labeled as misinformation and did not allow into the public square for several months?

HOWARD: Would you please enlighten me?

SANFORD: Yes, so there were reports on Facebook, viewpoints that had been expressed, that the COVID virus was indeed man-made. Facebook censored that and labeled it as misinformation for months declaring that not safe for people to consume that kind of content. Then we learned on May 27 that they reversed course because new evidence came to light. And it just seems to me that there's a lot of scientific and health faith that your amendment is placing in the hands of a technology company, not a health care company.

HOWARD: Actually, from what the example you just gave to me is exactly the way things should work. We have—scientific information is ever-evolving.

SANFORD: So it's okay for a social—

HOWARD: Let me finish my response if I may, please. So whatever the current science is telling you I think is what would be guiding us. Science changes as we gather more information. So I don't know what Facebook chose to do subsequent to that. But the fact is if you are following the science and science changes, then you can change the information that you have on your platform based on the science.

SANFORD: So you're comfortable with a social media company being the arbiter on the public square of what is correct science and non-correct science?

HOWARD: Well, actually, I'm comfortable with looking at the scientific community that we have deemed the experts in these areas, like the Centers for Disease Control, giving us the information that we need. If they are using that, then I'm comfortable.

SANFORD: So are you saying that you prefer a social media company, a technology company, to be that arbiter? To be those, you said—

HOWARD: No, I did not say that.

SANFORD: —those that we deem in the scientific community and—

HOWARD: What I am saying is—

SANFORD:—the deeming is being done by the social media companies.

HOWARD: What I am saying is that they should not be prohibited from using their discretion at looking at what the current science says to determine what is misinformation and what is not.

SANFORD: They shouldn't be prohibited from prohibiting—

HOWARD: They should not be prohibited.

SANFORD: —the public square from understanding the truth of the information?

HOWARD: They should not be prohibited from disallowing misinformation that is detrimental to the public health.

SANFORD: What if when it turns out misinformation is actually the truth?

HOWARD: Well, just like what happens with all of us. When we learn more information we say, oh, well, that's what I thought then, and now I have more facts, and this is what I think now. That's how science works.

SANFORD: But in the meantime the public has been misled for months on end because of their censorship on social media.

HOWARD: It's not necessarily misled. That's a misnomer. They are being given the information that science has at that time until science gets more information. That's how it works. At one time people thought that, you know, there weren't such things as germs. They didn't understand how that worked. You learn things. You change as you go along as science gathers more information. That's how science works.

SANFORD: I'm afraid—thank you for your time, but I'm afraid that we are placing a lot of faith into technology companies to be the arbiter of health information in this country.

HOWARD: I'm not placing any faith in them being the arbiter of health information. I am asking that they not be prohibited from removing misinformation on their platforms that results in health outcomes that are to the negative for our state.

[Amendment No. 3 failed of adoption by Record No. 83.]

[Amendment No. 4 by Rosenthal was laid before the house.]

REPRESENTATIVE ROSENTHAL: Very simple amendment—this would preclude allowing Holocaust deniers to spread misinformation on social media platforms. It just inserts in the proper place, "includes the denial of the Holocaust." This is dangerous culturally. It's dangerous for our heritage. And if you don't want to repeat the Holocaust, you can never forget. You cannot spread this misinformation. So I hope for your favorable consideration. Let's not allow spreading misinformation about the Holocaust. It was a real event, cost millions of lives.

CAIN: I agree with Representative Rosenthal. The denial of the Holocaust is a dangerous thing. Anybody that denies it is a complete moron. I will tell you that Section 230 of the Decency Act allows these companies to, in my opinion, probably censor that exact thing—something lewd, lascivious, excessively violent, otherwise objectionable, something considering harassing. I think they could probably do it on their own. What this does prohibit them from doing is censoring viewpoints. So I think this amendment is unnecessary because I think they can already do exactly that. So I must, respectfully, oppose this amendment.

ROSENTHAL: Plain and simple—if you vote against this, you're voting to allow Holocaust deniers to post misinformation.

[Amendment No. 4 failed of adoption by Record No. 84.]

[Amendment No. 5 by Rosenthal was laid before the house.]

ROSENTHAL: This is very similar but in a way more immediately dangerous. This is about groups that directly or indirectly promote or support any international or domestic terrorist group or international or domestic terrorist acts. Now, FBI Director Wray is saying that international and domestic terrorism are two of the biggest growing, worst problems facing America today. And they use social media platforms to spread their information and to recruit people.

WU: Mr. Rosenthal, I think you brought up a very good point. Did you know that in all those stories of American and British kids going to Syria to join ISIS, those kids were all recruited through social media?

ROSENTHAL: Right, exactly.

WU: Every single one of them.

ROSENTHAL: Every single one of them.

WU: In fact, social media has actually become a very powerful recruitment and propaganda tool for terrorist groups.

ROSENTHAL: I think it's incredibly pertinent right now because we just saw ISIS kill a bunch of Americans. We do not want to allow them to recruit our kids and our teenagers or adults. We don't want them to use our social media platforms to recruit Americans.

WU: And under this bill, without this provision, they would be protected. Because their discussion about their propaganda and their recruitment efforts and their victories and their efforts to terrorize us—it would be necessary to keep it on the platform as public discussion, as a part of the public square.

ROSENTHAL: Forgive me for saying this—it's terrifying.

WU: Thank you for this amendment.

CAIN: If you go to page 13, line 3, you will see that we already permit them to do this if it "directly incites criminal activity or consists of specific threats of violence targeted against a person or group because of their race, color, disability, religion, national origin or ancestry, age, sex, or status as a peace officer." In fact, this is language offered from Senator Blanco from **SB 12** during the regular session in direct response to the tragedies that occurred in El Paso. Moreover, Section 230 of the Communications Decency Act allows them to censor this exact content—language that's "excessively violent, harassing, or otherwise objectionable." Members, this amendment is just unnecessary. We already allow them to do exactly what he's trying to do. Therefore, I must, respectfully, oppose this amendment.

ROSENTHAL: Members, I almost can't believe I have to say this. The beginning of this says, "directly or indirectly promotes or supports any international or domestic terrorist group." I don't care what else is in any other statute. There's no reason not to have this language in the bill.

WU: Mr. Rosenthal, do you understand that someone can recruit and spread propaganda without offering to commit a crime?

ROSENTHAL: Of course.

WU: Do you understand that you can offer to spread propaganda and recruit without showing gory pictures or pictures of beheadings or videos of beheadings?

ROSENTHAL: Of course.

WU: In fact, that's how the propaganda and how the recruitment starts—very gently.

ROSENTHAL: Very gently and with slick produced videos that make it look attractive and romantic, right?

WU: They say, we're just having a discussion; we just want to have a talk with you. And you understand that many of these social media sites have spent countless hours and probably millions and millions of dollars trying to stomp out these recruitment efforts by terrorist groups and prevent them from spreading more propaganda and spreading more hate.

ROSENTHAL: That's right.

WU: And with this bill, because what they do doesn't get to the point of a crime, because it doesn't get to the point of the Decency Act, they can keep going.

ROSENTHAL: Very good point. Members, once again I can't believe I even have to urge you to vote for this, but please do. We do not want to directly or indirectly promote or support any international or domestic terrorist group or act. Please adopt this amendment.

[Amendment No. 5 failed of adoption by Record No. 85.]

[Amendment No. 6 by Dominguez was laid before the house.]

REPRESENTATIVE DOMINGUEZ: Put simply, I think what we are learning today and we've learned in the past couple of years is that there is a hunger for a public square—a place where people can discuss their ideas or criticisms either of society, each other, or government. But I think the best way to do this would be for the State of Texas to offer this forum. The secretary of state can put up the website "Publicforum.Texas.gov" and let people have at it. They can share all their public opinions there, and if we want to check to see what the pulse of our neighbors are, it will be on a public website. People can have input on our legislation, on our public officials. Let's just do it. Let's just make it official. Let's not rely on the TikTok or the Facebook or the Twitter. There's no need for all of us to log in to all of those. We can just log in to this one and get right down to people's opinions.

WU: Representative, I think you are an attorney, right?

DOMINGUEZ: Yes, sir.

WU: Okay. And I don't need to explain to you that the First Amendment of the United States Constitution that provides protection of free speech is actually about a prohibition against state action?

DOMINGUEZ: That's correct. The way the language is written in that amendment is "Congress shall make no law."

WU: Right, that it's not about what private individuals or private companies can do. It's about what the state can do to a private individual.

DOMINGUEZ: Correct. It's written in a way so that our government is not the one telling other companies or forums what they can or can't do.

WU: So instead of this bill telling private companies what they can or cannot say out of their own we're saying let's create a safe platform that we can administer and we can regulate. We'll help. We'll make everyone here moderators on that platform.

DOMINGUEZ: I believe that's the safest way to accomplish the task that Chairman Cain is trying to put forth because I don't think the current bill is going to pass scrutiny in our federal courts.

WU: In fact, it hasn't.

DOMINGUEZ: The better way to do it is just have it run by the state.

CAIN: I oppose this amendment. Please vote no.

DOMINGUEZ: Texas can lead the way.

[Amendment No. 6 failed of adoption.]

WU: I will keep this very, very short. Throughout this entire last regular session, I was up here time and time again talking about how I oppose the bill because it violated the First Amendment because it stifled other people's ability to speak. I never thought I'd be here on the opposite side doing this. I never thought I would be here in front of republicans telling republicans to not tell private businesses and private companies how they can regulate their own business and their own platform and how they can regulate the speech that is coming off of their platforms and telling companies who are trying to not get sued—because people are harassing people, people are threatening people, people are doing all sorts of things that cause distress and to make people maybe want to sue them—how they are doing things to prevent their own company from coming under attack and how they run their business. I never thought I would have that day where I would have to tell republicans, "Hey, leave them alone. Let the market sort it out."

If you don't like being on this platform, if you don't like the way they handle your speech, go somewhere else. Time and time again, what we have said here and what we have shown on this floor is that this body only supports the rights that they like at that moment. They only like the speech that they have at that moment. They only like the rights that they have at that moment. And the moment somebody else uses it to do something they don't like, they're against it. And the moment their rights get taken away, they want to enforce it. It shouldn't be that way. You should support all constitutional rights. If you believe that private companies and private individuals should be free to do their own thing until they commit a crime, until they harm other people, then act like it.

REPRESENTATIVE CAPRIGLIONE: As a republican legislator, I've always felt that it's not the government's role to overregulate private businesses. It's not the government's role to stifle the free market or innovation. But here we are. I've always appreciated the more literal than interpretive reading of our Constitution: "Congress shall make no law . . . abridging the freedom of speech, or of the press."

Congress shall make no law abridging the freedom of speech or of the press. With these words, our Founding Fathers set down in writing what would become one of our most ingrained and cherished beliefs—that the government shall not make any laws to stifle private individuals from speaking their mind and especially for or against the government and its officials. Government requiring or prohibiting content moderation flies in the literal reading of the First Amendment. And I have to ask, how will a government not use this slippery slope to mandate other companies and what they can and cannot allow their customers to say or to do when conducting private transactions? Why would we allow, as it does in this bill, a Texas agency to become the 2021 version of the Ministry of Truth?

The idea that a free social media application is a common carrier is nonsensical. Think about this. This is a free, open, and available to everyone social media application. That that is a common carrier is nonsensical on its face. The competitive landscape for communication is not just Facebook or Twitter or TikTok or any of dozens or hundreds of other social media apps. It includes the telephone, the text, e-mails, and even, believe it or not, still the ability to talk to one another. Unlike built-up infrastructure, the services provided by social media companies are easily substituted. Demanding that government put a free—again, a free—social media platform on the same level as a utility is ludicrous and should be overruled. This bill specifically targets a small group of companies performing a legal and sound business and if successful would ultimately destroy their ability to operate.

When I was younger, I used to have my own bulletin board system. I was a systems operator, a sysop. I would moderate channels, and the reason you do that is so that you can have a free flow of information. The reason is because absent those rules, absent that moderation online, you start to get, essentially, anarchy. People start writing things and posting things and images that not only are unacceptable to the total, but it actually inhibits the ability to have free speech. Conservatives use social media to share news and information and by passing legislation like this, by removing the content moderation, they will be unduly harmed as government overreach and intrusion destroys its efficacy.

Now, I want to be clear that I do not agree with any of the policies that social media companies have created and used, and I believe those policies today have not been done in a fair way. I believe that as a private individual. I also know that as a private individual, I can decide for myself whether I still want to use this product. With that, I appreciate, obviously, all the work that Chairman Cain has done on this bill, but I cannot support it.

REPRESENTATIVE TOTH: If someone were to put something in the *Houston Chronicle* about your wife that was blatantly untrue, could your wife then sue the *Houston Chronicle* for putting that in there?

CAPRIGLIONE: I believe that I could or she could or other people that are harmed. I think that—

TOTH: Why? Why could she sue the *Houston Chronicle*?

CAPRIGLIONE: Again, I think libel and slander are—

TOTH: How about if that same person did it on Twitter, Facebook, Instagram?

CAPRIGLIONE: I think that they would be able to find an action against the individual who posted that. Listen, if someone goes—

TOTH: The question I asked you is could they sue the *Chronicle* and you answered yes.

CAPRIGLIONE: You asked a question and if you want me to answer it, then give me an opportunity to do so.

TOTH: Okay. You bet.

CAPRIGLIONE: Okay. I think if Facebook, Inc. or Twitter, Inc. said something that was false or slanderous or libelous, someone could sue the company, yes.

TOTH: Okay, so the question that I asked, though, is if someone paid money to put something out in the *Houston Chronicle* that was blatantly dishonest could they sue?

CAPRIGLIONE: Who are they paying?

TOTH: Could they sue the *Chronicle*?

CAPRIGLIONE: In your example, who are they paying?

TOTH: Could they sue the *Chronicle*?

CAPRIGLIONE: If the *Chronicle* is taking that money and they know that it's false and they print it, I'm assuming that someone—and there's plenty of lawyers in here that could probably answer better—could take up that case.

TOTH: Okay, again, could your wife then sue Twitter or Facebook if that same person posted it on Facebook and Twitter instead of the *Chronicle*?

CAPRIGLIONE: Are they also paying Twitter, Inc. and Facebook, Inc. for that?

TOTH: Yeah, if they boost it, you bet.

CAPRIGLIONE: I don't know the answer to that question.

TOTH: You do know the answer to that, don't you?

CAPRIGLIONE: No, I don't know the answer to that question.

TOTH: You know that they have protection—

CAPRIGLIONE: That's not what this is about. What this bill does—

TOTH: You know that they have protection, Mr. Giovanni. Giovanni, you know that they have protection, Capriglione, Representative, because of—what is it—Section 231?

CAPRIGLIONE: It's 230, I believe.

TOTH: It's Section 230. So you do know of it.

CAPRIGLIONE: Listen, I can tell you here that I disagree with the federal government's law, but what I also know—

TOTH: But that's not the point. Isn't that a form of federal overreach?

CAPRIGLIONE: —is that I don't write federal law. I mean, I don't write federal law. What I know is—and again, Representative, here's the deal. This bill sets up a cause of action that any one of us republicans would be 100 percent against on any other day. This bill sets up causes of action and lawsuits that, again, based on the votes that you and I and other republicans have taken, we have always been against. And here we are and you are talking about finding more and more ways to sue private companies for running a private business, for wanting to moderate their own content amongst private citizens. That's not the role of government.

TOTH: Do you believe that Section 230 is a form of government overreach?

CAPRIGLIONE: Do you believe that a bakery, for instance, should be able to sell what products they want?

TOTH: Of course.

CAPRIGLIONE: Okay. So why can't a social media company also be able to handle their business the way that they want?

TOTH: Why should they be granted protection from the government that other media corporations don't get?

CAPRIGLIONE: That's, again, a federal statute.

TOTH: Do you believe that Section 230 is a form of government overreach?

CAPRIGLIONE: I would not have voted for Section 230 if I had been in the federal government—

TOTH: Do you believe it's a form of government overreach?

CAPRIGLIONE: —which we have absolutely no say in.

SANFORD: Representative Capriglione, my very good friend and classmate, you made in your comments several references to this free service, these free social media services. My question for you, Representative, if it is so free, how do they make their billions of dollars of revenue?

CAPRIGLIONE: That's a topic that I have fought some of these social media companies on, okay? When it comes to the privacy and the commercialization of the data that they have, I am opposed. I am also opposed to the policies they have. But what the bill in front of us is about is, again, do we want, as a government, do we want to come back to our constituents and say, "You know what, I went in there and I told a private company what people can and can't say, what they can and can't do with the content on their site." They obviously make a profit through advertisement.

SANFORD: Yes, sir.

CAPRIGLIONE: That's where 90 percent of their profits come from.

SANFORD: Would it be more accurate to say that we actually pay for the social media services that we consume and use through cost of goods, through advertising, through the lack of privacy of them selling and using our data, and with our attention on their sites which you know that they use by eyeball time and our clicks to sell to advertisers? Would it be more fair to say that it is not free? We very much pay for those services.

CAPRIGLIONE: The reason I mentioned that it was free was in the section where I was talking about common carrier or not. A traditional common carrier, for instance, like a telephone service or subscription or monthly service fee to your cable and others is part of the conversation about whether or not it's an actual carrier. In this case, you can make the case that your time is valuable, but other than advertisers—like some of those in the room, I've advertised a lot on it—most people use the product for free.

CAIN: Members, just to remind you of a few things. People are probably groaning. One, the cause of action only allows for attorney's fees for censorship based on one's viewpoint. It's not about content. It's an important matter.

[**CSHB 20**, as amended, was passed to engrossment by Record No. 86.]

