

SUBJECT: Banning sound amplification devices near polling places

COMMITTEE: Elections — committee substitute recommended

VOTE: 5 ayes — Denny, Bohac, Anchia, Anderson, J. Jones
0 nays
2 absent — Hughes, T. Smith

WITNESSES: For — Susie Carter, Hays County Precinct 2; Robert Howard, Libertarian Party of Texas; (*Registered but did not testify:*) Fred Lewis, Campaigns for People; Suzy Woodford, Common Cause of Texas
Against — None
On — Elizabeth Winn, Secretary of State

BACKGROUND: Under Election Code, secs. 61.003 and 61.004, first enacted in 1951, it is unlawful for any sound truck to approach within 1,000 feet of a polling place during voting hours for the purpose of making political speeches or electioneering for any proposition or candidate. Election judges may prevent loitering and electioneering within 100 feet of the door through which voters enter and may appoint special constables to enforce this provision. The penalty for violations is a class C misdemeanor (maximum fine of \$500).

DIGEST: CSHB 535 would amend Election Code, sec. 61.004 to include operating a sound amplification device, in addition to using a vehicle with a loudspeaker, to the offense of making a political speech or electioneering for or against any measure, political party, or candidate within 1,000 feet of a polling place during the voting period.

The bill would take effect September 1, 2005.

SUPPORTERS SAY: CSHB 535 would help ensure that voters have the opportunity to cast their ballots in an atmosphere free from distracting influences or harassments. Since references to sound trucks first appeared in the Election Code more

than 50 years ago, audio technology has improved considerably. The emergence of bullhorns and hand-held microphones has encouraged electioneering outside the 100-foot boundaries, but within 1,000 feet of polling places. While the presence of these loudspeakers technically does not break the law, it violates the spirit of the law and may disturb voters. By eliminating this loophole CSHB 535 would protect voters and the sanctity of the election process.

Our country has a long history of protecting free speech while recognizing that restricted zones around polling places are necessary to preserve the fundamental right to vote. While under current law a voter at the polling place door still might be able to see a candidate's billboard or other sign located more than 100 feet away, the sight of such campaign material is less intrusive and easier to ignore than the blasting sound of a bullhorn or loudspeakers from a nearby political rally.

OPPONENTS
SAY:

Respect for voters at the polls should not override the First Amendment. Campaign-free zones outside polling places generally serve the purpose of protecting orderly access. This bill would restrict free speech while doing nothing additional to protect access to the polls or the integrity of the ballot box. For example, voters still could be bombarded by campaign signs and billboards that are clearly visible from the legal distance of 100 feet from the polling place — why should a separate standard exist for audible messages? Elections should encourage political expression within a reasonable distance from the ballot box. This bill would establish an unreasonably large zone — more than 72 acres — around a voting entrance in which free expression through any loudspeaker would be prohibited.

OTHER
OPPONENTS
SAY:

The bill is too broad in its definition of “sound amplification device.” This standard arguably could apply to a candidate wearing a hearing aid within 1,000 feet of a polling place.

NOTES:

The committee substitute for HB 535 differs from the bill as introduced by changing “loudspeaker” or “hand-held loudspeaker” to “sound amplification device.”