

SUBJECT: Restricting enforcement against electioneering to 100 feet of polling place

COMMITTEE: Elections — favorable, without amendment

VOTE: 6 ayes — Berman, Bohac, England, Anchia, Burnam, Farias

0 nays

1 absent — C. Howard

WITNESSES: For — (*Registered, but did not testify*: Ken Bailey, Texas Democratic Party; John Courage, True Courage Action Network; Kathryn Dean, ACLU; Sonia Santana, ACLU-Texas; Skipper Wallace, Texas Republican County Chairman's Association)

Against — None

On — Ann McGeehan, Office of the Secretary of State

BACKGROUND: Election Code, sec. 61.003 establishes a class C misdemeanor offense (maximum fine of \$500) if, during the voting period, a person loiters or electioneers within 100 feet of an outside door at a polling place. Sec. 85.036 establishes the same offense for electioneering outside of an early voting polling place.

Sec. 32.075 charges the presiding election judge with preserving order and preventing breaches of the peace and violations of the Election Code at the polling place and within the area where electioneering and loitering are prohibited. A presiding judge has the power of a district judge to enforce order and preserve the peace, including the power to issue an arrest warrant. The presiding judge may appoint one or more persons to act as special peace officers at the polling place. A special peace officer, however, may not enforce the prohibition against electioneering or loitering near the polling place unless the officer's appointment is approved by the presiding officer of the local canvassing authority.

DIGEST: HB 3143 would amend Election Code, sec. 32.075 to establish that the presiding judge or a specially appointed peace officer could not enforce the prohibition against electioneering or loitering outside of the area

within which electioneering and loitering are prohibited under sec. 61.003 and 85.036.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

HB 3143 would prohibit election judges from extending boundaries for electioneering or loitering outside of the 100 feet, which current law specifies. Incidents have arisen in which overzealous election judges have interpreted the 100-foot boundary in current law to be merely a starting point and directed candidates and campaign workers more than 200 feet away from the outside door of a polling place. Current law is clear that 100 feet is the designated distance at which candidates or volunteers can distribute flyers, discuss a particular candidate, or otherwise campaign for or against a measure or a political party. HB 3143 simply would clarify and strengthen the intended purpose of the 100-foot electioneering prohibition.

**OPPONENTS
SAY:**

Voters generally prefer to cast their ballots in an atmosphere free from distracting influences or harassments. 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. Consideration should be given to extending the current 100-foot electioneering restriction and allowing election judges and specially appointed peace officers more leeway to enforce it.