

SUBJECT: Allowing legislatively produced recordings in political advertising

COMMITTEE: House Administration — favorable, without amendment

VOTE: 7 ayes — Geren, Anchia, Anderson, Parker, Sanford, Sherman, E. Thompson

1 nay — Ortega

3 absent — Howard, Flynn, Thierry

WITNESSES: None

DIGEST: HB 368 would repeal Government Code sec. 306.005, which prohibits the use of legislatively produced audio or visual materials in political advertising. The bill would make conforming changes to sec. 306.006, which prohibits the use of legislatively produced audio or visual material for a commercial purpose unless the legislative entity that produced the materials or under whose direction the materials were produced gives its permission.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.

SUPPORTERS SAY: HB 368 would repeal a law that a Harris County state district court determined was a violation of the First Amendment to the U.S. Constitution and Art. 1, sec. 8 of the Texas Constitution. Legislatively produced video and audio recordings of floor and committee proceedings belong to the public, including for use in political advertising.

Texas is the only state with this type of ban, and the Texas attorney general declined to defend the law when it was challenged in court. It would not be fair to narrow the scope of the bill, as some have suggested, to bar only legislators from being able to use footage in campaign ads.

Although Texas has been permanently enjoined from enforcing Government Code sec. 306.005, that section should be removed from statutes to avoid someone reading it and not realizing it was ineffective.

OPPONENTS
SAY:

Instead of repealing the ban on the use of legislatively produced audio or visual materials in political advertising, a better course would be to amend the law to prohibit a member, officer, or employee of a house, committee, or agency of the Legislature from using the materials in political advertising. This would be similar to the rules of the U.S. House of Representatives, which ban the use of broadcast coverage and recordings of floor and committee proceedings for political purposes.