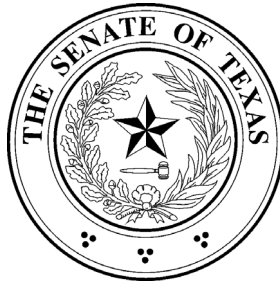


Senate Committee on State Affairs

Interim Report

January 2025



January 10, 2025

The Honorable Dan Patrick
Lieutenant Governor of the State of Texas
Capitol Building, Room 2E.13
Austin, Texas 78701

Dear Lieutenant Governor Patrick:

You charged the Senate Committee on State Affairs with reviewing several issues within the Committee's jurisdiction. We submit this report in response to those charges.

Respectfully submitted,

A handwritten signature in black ink that reads "Bryan Hughes".

Bryan Hughes, Chair

A handwritten signature in black ink that reads "Angela S. Paxton".

Angela Paxton

A handwritten signature in black ink that reads "Paul Bettencourt".

Paul Bettencourt

A handwritten signature in black ink that reads "Brian Birdwell".

Brian Birdwell

A handwritten signature in black ink that reads "Morgan LaMantia".

Morgan LaMantia

A handwritten signature in black ink that reads "Jose Menendez".

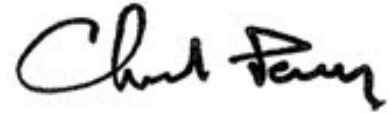
Jose Menendez

A handwritten signature in blue ink that reads "Mayes Middleton".

Mayes Middleton



Tan Parker



Charles Perry



Charles Schwertner



Judith Zaffirini

VICE CHAIR, NATURAL
RESOURCES AND ECONOMIC
DEVELOPMENT

TEXAS JUDICIAL COUNCIL

TEXAS ACCESS TO JUSTICE
COMMISSION

CHAIR, EAGLE FORD SHALE
LEGISLATIVE CAUCUS



Judith Zaffirini, PhD

**DEAN OF THE TEXAS SENATE
STATE SENATOR, DISTRICT 21**

COMMITTEES

BUSINESS AND COMMERCE

FINANCE

REDISTRICTING

STATE AFFAIRS

**LEGISLATIVE OVERSIGHT
ON GRID RELIABILITY**

January 9, 2025

The Honorable
Bryan Hughes, Chair
Senate Committee on State Affairs
P.O. Box 12068
Capitol Station
Austin, TX 78711

Dear Chair Hughes:

Thank you for your leadership as Chair of the Senate Committee on State Affairs. It is my privilege to serve with you. Thanks, too, for this opportunity to share my perspective regarding our interim report. Because it includes many fine recommendations, I am pleased to sign it. This letter, however, summarizes several of my concerns, and I would appreciate your including it in our published version.

First, while noncitizens are not legally allowed to vote, I am concerned that marking lawful residents' driver's licenses may lead to possible unequal treatment in areas unrelated to voting. There may be alternative ways to ensure legal residents are not accidentally counted as eligible to vote without causing unintended consequences. We could, for instance, explore other mechanisms for the Department of Public Safety (DPS) and the Secretary of State to flag lawful residents' driver's licenses internally rather than marking the licenses themselves.

Second, although I support prohibiting foreign adversaries from purchasing property near critical infrastructure, overly broad policies impacting the acquisition of residential property based on national origin raise concerns of potential discrimination. Careful balancing of national security and civil rights is warranted in this area.

Third, while there are legitimate reasons necessitating the identification of some protestors, a complete ban of face coverings at protests may be too broad, as some persons may require face coverings for religious, health, or safety purposes; and related legislation should accommodate those circumstances.

Fourth, I am delighted our interim report is recommending strengthening the Texas Public Information Act (TPIA) by supporting additional training for local government officials who fail to comply with TPIA, as my SB 44 (2023) would have required. I am looking forward to refiling this bill, as it would require open records training within six months for a governmental body that was reported for failing to respond to a public information request.

Finally, my staff and I are researching legislation to increase the availability of housing, especially by converting office space into residential living spaces. Some stakeholders may have conflicting views regarding this issue, and we are hoping to reach a consensus.

Thank you for your dedication to discussing these important issues. I look forward to continuing to work with you and other members of our committee during the legislative session that convenes on January 14.

May God bless you.

Respectfully,

A handwritten signature in black ink that reads "Judith Zaffirini". The signature is written in a cursive, flowing style.

Judith Zaffirini

Z/hd



SENATOR PAUL BETTENCOURT

DISTRICT 7

January 9, 2025

Dear Chairman Bryan Hughes,

First, I want to thank you and your staff on the State Affairs Committee for all your hard work this interim. As a result, I am signing on to the committee report with a couple of exceptions.

Interim Charge 7 has a recommendation to lower the election runoff threshold below the 50% + 1 standard currently in the election code, but the report does not specify a replacement mechanism. Because of the number of possible replacement mechanism permutations is quite large, I will withhold my support for that recommendation at this time.

On Interim Charge 13, I agree with the report that a one-size-fits-all model will not work as a standard for any State as large as Texas, and I would just offer a simple cautionary note that even the 3rd Party's application mentioned in the report would have to be reviewed in detail in its entirety before being adopted as a propagated standard statewide.

Congratulations on all your hard work, Mr. Chairman, as this is quite a volume of interim charge recommendations by any committee in the Texas Senate! I look forward to working with you during the 89th Legislative Session.

Sincerely,

A handwritten signature in cursive script that reads "Paul Bettencourt".

Senator Paul Bettencourt
Chair, Senate Committee on Local Government

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The Senate of The State of Texas

CHAIR NATURAL RESOURCES AND
ECONOMIC DEVELOPMENT
CHAIR BORDER SECURITY

STATE AFFAIRS
EDUCATION
BUSINESS AND COMMERCE



BRIAN BIRDWELL

January 8, 2025

The Honorable Bryan Hughes
Senate District 1
P.O. Box 12068
Capitol Station
Austin, TX 78711

Dear Senator Hughes:

Thank you for your leadership of this committee where we cover a vast range of issues that impact Texas. The length and scope of the report demonstrates the amount of time and dedication you and your staff invested in seeking facts and making recommendations which reflects the work of the committee. I will sign the committee report as an acknowledgement of it accurately reflecting what the committee did and heard in testimony, but my signature does not reflect that I concur with every element of the report. There are two sections of the report with which I cannot concur and another upon which I would like to comment.

First, regarding Charge 7, I **non-concur** with a portion of the final recommendations, specifically the recommendation to lower the 50% + 1 threshold for a primary runoff victory. For the ease of preventing runoffs, the recommendation considers the will of the plurality over the will of the majority. If the threshold is lowered as recommended, a candidate who did not secure a majority of the voters in the initial election in a primary is declared the winner. While the logic of the candidate with plurality prevailing works in a general election with multiple party candidates due to the finality of said election, in a primary that logic fails since a party is choosing its candidate to put forward for the general. We would be choosing convenience of plurality over the will of the majority within the party selection process. Will of the majority is a center of gravity principle of our constitutional republic, the convenience of the process is not.

I do, however, **concur** with the recommendation that the timeline of a primary runoff is too long. A runoff must first comport with federal law relating to overseas and military voters, so please consider the next sentence within that context. I believe 6 weeks between the original and the runoff election would allow time for the certification of the initial election results, then print and mail runoff election ballots to overseas and military voters who participated in the initial primary, and enough time for the overseas voter, whom might



be in a remote location, to execute and return the ballot.

Let me also comment on the interim report's recommendation on charge 13 regarding homelessness and Haven for Hope. The success of Haven for Hope highlights how their structural model can be used as a template throughout Texas to alleviate homelessness and provide the homeless with the tools to get back on their feet. However, I **non-concur** with the policy the organization stated on page 76 of the report “ This campus does not require identification for entry and allows individuals to remain *active in addiction*, provided drugs or alcohol are not brought onto the premises”.¹ If we supported such a policy, the State would be speaking out both sides of its mouth by working to eliminate addiction while at the same time subsidizing addiction, even though off campus. State resources should be utilized to combat addiction. While I support the structure of Haven of Hope as a model for other homeless programs in Texas, I oppose the organization's policy regarding active addiction.

Thank you again for the time, care, and devotion you, the members of the committee, and your committee staff have dedicated to the duties of your committee and the safety of the citizens of Texas.

Sincerely,



Brian Birdwell
Senate District 22

¹ *Senate Committee on State Affairs Interim Report*, Senate Committee on State Affairs (January 2025), p. 76



The Senate of The State of Texas

Senator José Menéndez

District 26

January 10, 2025

Chairman Bryan Hughes,

Thank you and your staff for your leadership and work on this report. It is reflective of the sentiment and evidence presented at each of the interim hearings held. While I am signing on, there are several items I find important to note.

I am in agreement that we must conduct free and fair elections. In doing so, we must also ensure that those eligible to vote have clear access to the ballot box without undue barriers. Moreover, it is important that Texas secure its critical infrastructure from foreign adversaries engaging in actions that put our national security at risk. However, when reviewing proposed safety measures we must be careful that we do not create predatory laws against individuals working towards the American Dream.

In regard to responsible investments, the most robust and resilient investment profiles are those that are diverse and responsive to market trends. Just as we respect the whim of future legislatures, we should be wary of tying the hands of our critical investment decisions. These concerns extend to cannabis policy, with only three dispensaries in the entire state for the Compassionate Use Program's 65,000+ patients, barriers to access exist. Banning all hemp alternatives will not only hurt patients, but small businesses as well. It is important, however, that children are protected from these substances and that we look for ways to prevent access to them. Overall, when we are looking at solutions for this issue, we must not over-correct and punish those who rely on access to this care.

Lastly, while the recommendation for the charge on unmasking protestors attempts to strike a balance, the background and sentiments of this charge paint broad strokes, ignoring the multitude of motivations to mask in large crowds. While I agree there may certainly be a presence of agitators in protests, I find it necessary to note most protests are peaceful. We have heard from constituents on both sides of the issue who fear doxing without a mask, and who fear for their safety of those who are masked. It is important when making legislative decisions that all matters are taken into consideration, and that we do not consider one's freedom only if we agree with their point of view.

Overall, this interim report is reflective of the sentiment and evidence presented at each of the interim hearings held. Thank you and your staff for your thoughtful work on these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "José Menéndez".

State Senator José Menéndez

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INTERIM CHARGES

The Senate Committee on State Affairs was charged with fifteen interim charges by the Lieutenant Governor. The Committee held interim hearings on the following charges:

1. **Maintaining Election Security:** Identify threats to Texas’s election integrity, including those from “Big Tech” and foreign entities. Recommend ways to neutralize such threats. Additionally, evaluate the countywide polling place program in Texas. Make recommendations to address countywide polling issues, such as increased wait times, longer travel distances, supply shortages, and reporting irregularities. Evaluate current laws that prohibit political subdivisions and public school districts from using government resources for illegal electioneering. Make recommendations to strengthen these laws and put a stop to illegal electioneering.
2. **Social Media & Protecting Children:** Study the impact of social media use on children. Review current mechanisms in place to protect minors online. Monitor the implementation of House Bill 18, 88th Legislature, relating to the protection of minors from harmful, deceptive, or unfair trade practices in connection with the use of certain digital services and electronic devices, including the use and transfer of electronic devices to students by a public school. Make policy recommendations to further protect Texas children online.
3. **Protecting Texas Land and Assets:** Evaluate strategic land and asset acquisitions in Texas by foreign entities that threaten the safety and security of the United States. Further, evaluate large-scale purchases of single-family homes by domestic entities and its impact on housing affordability for Texas families. Make recommendations to ensure Texans are secure from foreign threats and homes are affordable in our state.
4. **Responsible Investing:** Study the impact of environmental, social, and governance (ESG) factors on our state’s public pensions, with a focus on proxy voting services. Make recommendations to ensure our state’s pension systems vote and invest in accordance with their fiduciary responsibility to maximize profit. Additionally, monitor the implementation of Senate Bill 13, 87th Legislature, relating to state contracts with and investments in certain companies that boycott energy companies. Specifically, examine how a company is removed from the list of companies that boycott energy companies when the company ceases to boycott energy companies. Report on how frequently the list maintained by the comptroller is updated and make recommendations to ensure an ongoing accurate list.
5. **Banning Delta 8 and 9:** Examine the sale of intoxicating hemp products in Texas. Make recommendations to further regulate the sale of these products, and suggest legislation to stop retailers who market these products to children.
6. **Impeachment Reform:** Evaluate the constitutional and statutory impeachment procedures in our state. Make recommendations to ensure a fair and transparent process.

7. **Runoff Elections:** Study the prerequisites, timing, and efficiency of runoff elections. Make recommendations to increase the efficiency and lower the costs of runoff elections. Examine the 50% vote threshold to avoid a runoff, particularly when four or more candidates are running for the same office. Report whether the vote percentage threshold should be lowered in some instances.
8. **Lottery:** Study “lottery courier services,” which allow their clients to purchase lottery tickets over the internet. Report on the number of couriers and the magnitude of sales from such services in Texas. Determine whether courier services are operating legally in Texas and whether a change in law is needed to respond to technological advancements to protect children in our state and to maintain original legislative intent. Recommend legislation to clarify Texas’s laws regarding online lottery sales.
9. **Unmasking Protestors:** Study the use of face coverings and hoods designed to conceal the identity of those bent on committing crimes at protests. Recommend legislation to stop the chaos and destruction by those who attempt to commit crimes while concealing their identity during public gatherings.
10. **Stop Noncitizen Voting:** Evaluate the current safeguards in place to prevent noncitizens from voting in elections. Recommend legislation to facilitate the removal of noncitizen voters from the voter rolls as well as legislation to prevent noncitizens from registering to vote in Texas.
11. **Beverages with THC:** Evaluate Texas laws and regulations concerning THC beverage manufacturing and delivery. Report on the current regulations and safeguards Texas may or may not have in place for drinks with any amount of THC. Recommend legislation to protect Texas consumers.
12. **Public Trust in Government:** Examine the current state of accountability, ethics, and transparency in local government. Recommend ways to bolster public trust in local government by strengthening the Public Information Act and Open Meetings Act.
13. **Addressing Homelessness:** Study programs that address the homelessness crisis in Texas. Specifically, review programs like Haven for Hope and determine whether such programs could be a model throughout our state. Propose legislation to address the root causes of homelessness by expanding successful programs for cities of all sizes.
14. **Election Audit Reports:** Evaluate the Secretary of State’s election audit reports. Make recommendations to secure our elections and ensure counties follow the law.
15. **Monitoring:** Monitor the implementation of legislation addressed by the Senate Committee on State Affairs passed by the 88th Legislature. Specifically, evaluate the impact of Senate Bill 2284, relating to the sale of distilled spirits to ultimate consumers by the holder of a distiller’s and rectifier’s permit. Report whether the increased sale of distilled

spirits has had a positive impact on economic development and public safety in this industry.

SENATE COMMITTEE ON STATE AFFAIRS INTERIM HEARINGS

May 29, 2024, *Capitol Extension, E1.012*

The Committee took invited and public testimony on Charge Nos. 1, 3, and 5.

October 15, 2024, *Capitol Extension, E1.028*

The Committee took invited and public testimony on Charge Nos. 6, 8, 12, and 13.

October 16, 2024, *Capitol Extension, E1.028*

The Committee took invited and public testimony on Charge Nos. 7, 9, 10, 14, and 15.

October 17, 2024, *Capitol Extension, E1.028*

The Committee took invited and public testimony on Charge Nos. 2, 4, and 11.

INTERIM CHARGE DISCUSSIONS AND RECOMMENDATIONS

CHARGE NO. 1

Maintaining Election Security: *Identify threats to Texas’s election integrity, including those from “Big Tech” and foreign entities. Recommend ways to neutralize such threats. Additionally, evaluate the countywide polling place program in Texas. Make recommendations to address countywide polling issues, such as increased wait times, longer travel distances, supply shortages, and reporting irregularities. Evaluate current laws that prohibit political subdivisions and public school districts from using government resources for illegal electioneering. Make recommendations to strengthen these laws and put a stop to illegal electioneering.*

A. Background

1. Big Tech

Alphabet, Facebook, TikTok, and X (formerly Twitter), hereafter referred to as “Big Tech,” have engaged in widespread electioneering. These companies do not overtly favor one candidate over the other but instead use their algorithms and platforms to control the flow of information to the public.

The control and reach of Big Tech over many facets of life, including dialogue in the public square, cannot be overstated. These companies are as large as any company the world has ever seen. They dominate how information is delivered to Texans. Google search commands 90.68% of the global search market.¹ Meta, along with both Facebook and Instagram, controls around 73% of the global social media market.² TikTok has over 170 million active users in the United States, while X (formerly Twitter), has around 27 million domestic daily active users.³ More than half of Americans report at least sometimes getting their news from social media.⁴

Beyond size, TikTok poses additional dangers since it is controlled by the Chinese company, ByteDance. Under the laws and policies of the Peoples’ Republic of China (PRC), ByteDance is required to “support, assist, and cooperate with state intelligence work.”⁵

¹ *Search Engines Market Share*, Similar Web, <https://www.similarweb.com/engines/>.

² *Social Media Stats Worldwide* (Nov. 2023 – Nov. 2024), Statcounter, <https://gs.statcounter.com/social-media-stats>.

³ Brian Dean, *TikTok Statistics You Need to Know*, Backlinko, February 15, 2024, <https://backlinko.com/tiktok-users>; David Ingram, *Fewer People Are Using Elon Musk’s X As The Platform Struggles To Attract And Keep Users, According To Analysts*, NBC News, March 22, 2024, <https://www.nbcnews.com/tech/tech-news/fewer-people-using-elon-musks-x-struggles-keep-users-rcna144115>.

⁴ *News Platform Fact Sheet*, Pew Research Center (Sept. 17, 2024), <https://www.pewresearch.org/journalism/fact-sheet/news-platform-fact-sheet/>.

⁵ *National Intelligence Law of the People's Republic*, CSCI 1800: Cybersecurity and International Relations at Brown University, https://cs.brown.edu/courses/csci1800/sources/2017_PRC_NationalIntelligenceLaw.pdf; See also Kara Frederick, *TikTok Generation: A CCP Official in Every Pocket*, The Heritage Foundation, March 22, 2023, <https://www.heritage.org/big-tech/report/tiktok-generation-ccp-official-every-pocket>.

Big Tech has created a biased news environment by selectively choosing what stories to elevate or suppress, particularly around elections. High profile examples include the Hunter Biden laptop story which almost certainly affected the 2020 election.⁶ But that is just the tip of the iceberg.

After the 2020 election, both Facebook and Twitter banned the sitting President of the United States from their platforms limiting his ability to interact with the American people.⁷ The American Institute for Behavioral Research and Technology (AIBRT) estimates that Google's tactics may have shifted 2.6 million votes to Hillary Clinton in 2016.⁸ Even if AIBRT is overestimating, 2.6 million is a staggering number. This was not a one-time occurrence. It appears that Google continues to shift votes.⁹ Beyond news choice, Google and Facebook have both used their platforms to send targeted "go vote" reminders to certain voters but not others.¹⁰

Leaks from Big Tech have shown that this bias is not accidental but intentional. The *Wall Street Journal* obtained internal Google emails which showed Google engineers attempting to thwart President Trump's proposed "travel ban" by directing Google users to pro-immigration organizations and the ACLU.¹¹ Google is not alone. Facebook whistleblowers have stated that Facebook "routinely suppressed news stories of interest to conservative readers."¹² And the Twitter files showed that Twitter received and responded to pressure from officials from both parties that changed how it performed content moderation.¹³

Studies have shown that Google has interfered in United States elections 41 times since 2008.¹⁴ Facebook will not be outdone. The same methodology shows they have interfered 39 times since 2012.¹⁵

⁶ Hans von Spakovsky and Daniel Cochrane, *Don't Let Big Tech Influence the Elections Yet Again This Year*, The Heritage Foundation (May 3, 2024), <https://www.heritage.org/election-integrity/commentary/dont-let-big-tech-influence-the-elections-yet-again-year>.

⁷ Dylan Byers, *How Facebook and Twitter Decided to Take Down Trump's Accounts*, NBC News (Jan. 14, 2021), <https://www.nbcnews.com/tech/tech-news/how-facebook-twitter-decided-take-down-trump-s-accounts-n1254317>.

⁸ Robert Epstein, "Taming Big Tech: The Case for Monitoring," Hackernoon, <https://hackernoon.com/taming-big-tech-5fef0df0f00d>.

⁹ Zachary Jewell, *'Sufficient To Shift Millions Of Votes': Dr. Robert Epstein Warns Michael Knowles Of Google's Powerful Influence On Elections*, The Daily Wire, May 16, 2024, <https://www.dailywire.com/news/sufficient-to-shift-millions-of-votes-dr-robert-epstein-warns-michael-knowles-of-googles-powerful-influence-on-elections>.

¹⁰ Hans von Spakovsky and Daniel Cochrane, *Don't Let Big Tech Influence the Elections Yet Again This Year*, The Heritage Foundation, May 3, 2024, <https://www.heritage.org/election-integrity/commentary/dont-let-big-tech-influence-the-elections-yet-again-year>.

¹¹ John McKinnon, *Google Workers Discussed Tweaking Search Functions to Counter Travel Ban*, The Wall Street Journal, <https://www.wsj.com/articles/google-workers-discussed-tweaking-search-function-to-counter-travel-ban-1537488472>.

¹² Michael Nunez, *Former Facebook Workers: We Routinely Suppressed Conservative News*, Gizmodo (May 9, 2016), <https://gizmodo.com/former-facebook-workers-we-routinely-suppressed-conser-1775461006>.

¹³ Kelsey Vlamis, *Twitter granted requests from both the Trump White House and the Biden campaign to remove content in 2020, report says*, Business Insider (Dec. 3, 2023), <https://www.businessinsider.com/twitter-granted-requests-from-trump-white-house-biden-remove-posts-2022-12>.

¹⁴ Gabriela Pariseau and Dan Schneider, *41 Times Google Has Interfered in US Elections Since 2008*, MRC Newsbusters (Mar. 18, 2024), <https://www.newsbusters.org/blogs/free-speech/gabriela-pariseau/2024/03/18/41-times-google-has-interfered-us-elections-2008>.

¹⁵ Gabriela Pariseau and Dan Schneider, *39 Times Facebook Has Interfered in US Elections Since 2012*, MRC Newsbusters (Apr. 23, 2024), https://cdn.mrc.org/static/pdfuploads/Facebook_Report_SuperComp.pdf-1713886556414.pdf.

Big Tech interference in elections is clear. They have pushed a social agenda instead of presenting unbiased news. In May of 2024, this Committee authorized the issuance of subpoenas to Big Tech to investigate the bias being injected into social media and if there is a need for legislation to rein in Big Tech. The investigation is ongoing.

2. Foreign Financial Interference

In Texas, voters are asked from time to time to vote on ballot measures, issues, or initiatives. These are a form of direct democracy where instead of elected representatives passing bills, voters directly weigh in on policies. Constitutional amendments and city ordinances are examples of ballot measures that are utilized in Texas.

Under Federal law, noncitizens are banned from donating to candidates, campaigns, and PACs.¹⁶ The federal statute explicitly bans noncitizens from donating to any federal, state, or local election.¹⁷ There is a loophole, however, that allows noncitizens to donate directly to ballot measures and initiatives.¹⁸ This loophole was created in part by a 2021 Federal Election Commission (FEC) ruling that excluded noncandidate measures from the definition of “elections” and the reach of the federal statute.¹⁹

The door opened by this loophole has since been utilized by noncitizens. Most notably, Swiss billionaire Hansjörg Wyss has exploited this loophole to donate to pet projects throughout the country including those in Texas.²⁰ Wyss uses his billions to influence politics in the United States despite having, “never felt the need to become an American.”²¹ He also has donated nearly a quarter billion dollars to the massive leftwing Sixteen Thirty Fund.²² This fund has contributed nearly \$100 million over the last ten years in efforts to support or oppose local and statewide ballot measures throughout the country.²³

Texas is not the biggest recipient of Sixteen Thirty Fund largess. Over the 10 years tracked by Americans for Public Trust, a watchdog, Texas only received \$100,000.²⁴ But this number can only rise as other states, such as Ohio, ban noncitizens from donating to ballot measures.²⁵ Ohio’s 2024 ban has recently been upheld by the Sixth Circuit Court of Appeals²⁶ which should end

¹⁶ 52 U.S.C. § 30121(a)(l); 11 C.F.R. § 110.20(b), (c), (e), (f).

¹⁷ *Id.*

¹⁸ Notification with factual and legal analysis to Montana Mining Association and Stop I-86 to Protect Mining Jobs, MUR 7523, Federal Elections Commission (Oct. 4, 2021), https://www.fec.gov/files/legal/murs/7523/7523_23.pdf.

¹⁹ *Id.*

²⁰ Americans For Public Trust, *Foreign Influence in State Ballot Issues*, <https://americansforpublictrust.org/document/sixteen-thirty-fund-ballot-spending-report/>.

²¹ Giorgio V. Muller, *We Have Found a Good Home for Synthes*, https://www.nzz.ch/wir_haben_ein_gutes_heim_fuer_synthes_gefunden-ld.589550.

²² Americans For Public Trust, *Foreign Influence in State Ballot Issues*, <https://americansforpublictrust.org/document/sixteen-thirty-fund-ballot-spending-report/>.

²³ *Id.*

²⁴ *Id.*

²⁵ Ohio Rev. Code § 3517.121.

²⁶ Samana Sheikh, *Federal Court Backs Law Banning Foreign Contributions to Statewide Ballot Issues* (Oct. 11, 2024), <https://spectrumnews1.com/oh/columbus/politics/2024/10/10/ballot--foreign--nationals>.

foreign money in Ohio ballot measures. But Sixteen Thirty Fund previously spent over \$14 million in Ohio.²⁷ That money will certainly be repurposed and spent in other states with more lenient campaign finance laws. Texas must remain ahead of the curve.

It is commonsense that foreign money should be banned from elections. Seventy-eight percent of Americans agree that foreign nationals should not be influencing elections.²⁸ Other states, led by Ohio, have started to close the foreign donation loophole. Texas should do the same.

3. Illegal Electioneering

Texas law bans the use of public funds to electioneer for or against any candidate, measure, or political party²⁹ as well as the use of public funds and internal mail systems for political advertising.³⁰ Nevertheless, ahead of the March 6, 2024, primary, the Texas Attorney General was forced to file lawsuits against Frisco ISD,³¹ Denton ISD,³² Denison ISD,³³ and Castleberry ISD,³⁴ to address alleged violations of these statutes. This is not a new phenomenon. The Attorney General addressed complaints ahead of the 2018 primary election as well.³⁵

The Attorney General stated that Denison ISD's official website "expressed its support or opposition for certain political candidates and stumped for its preferred policy agenda" and endorsed other political measures through a resolution.³⁶ The Castlebury ISD superintendent was accused of using "her official email to send out an endorsement list of political candidates and instructed the district's administration to 'vote accordingly.'"³⁷ In that same vein, Frisco ISD was accused of using "official resources to stump for certain policies and political measures."³⁸ In Denton ISD, the Attorney General alleged that by using her official email "the principal of

²⁷*Foreign Influence in State Ballot Issues*, Americans for Public Trust (Apr. 15, 2024), <https://americansforpublictrust.org/document/sixteen-thirty-fund-ballot-spending-report/>.

²⁸ Honest Elections Project Polling, https://honestelections.org/wp-content/uploads/2023/07/July_2023_HEP-Polling_Memo.pdf.

²⁹ Texas Education Code § 11.169.

³⁰ Texas Election Code § 255.003.

³¹*Attorney General Ken Paxton Sues Frisco ISD for Illegal Electioneering*, Office of the Attorney General (Feb. 28, 2024), <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-sues-frisco-isd-illegal-electioneering>.

³²*Attorney General Ken Paxton Sues School District for Illegal Electioneering with Public Tax Money*, Office of the Attorney General (Feb. 22, 2024), <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-sues-school-district-illegal-electioneering-public-tax-money>.

³³*Attorney General Ken Paxton Sues Two More Texas School Districts for Illegal Electioneering*, Office of the Attorney General (Feb. 29, 2024), <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-sues-two-more-texas-school-districts-illegal-electioneering>.

³⁴ *Id.*

³⁵ Emma Platoff, *Texas AG Ken Paxton ramps up fight against schools' "illegal electioneering,"* Texas Tribune (Mar. 16, 2018), <https://www.texastribune.org/2018/03/16/texas-ken-paxton-illegal-electioneering-school-districts/>.

³⁶*Attorney General Ken Paxton Sues Two More Texas School Districts for Illegal Electioneering*, <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-sues-two-more-texas-school-districts-illegal-electioneering>.

³⁷ *Id.*

³⁸*Attorney General Ken Paxton Sues Frisco ISD for Illegal Electioneering*, <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-sues-frisco-isd-illegal-electioneering>.

Alexander Elementary School in DISD sent an email to all staff members encouraging the staff to vote against specific candidates who support certain policies.”³⁹

These alleged acts by public education officials were widely reported.⁴⁰ Such actions erode public trust in the neutrality of government institutions, and Texas must ensure that public funds are not used to influence elections.

B. Interim Hearing

On May 29th, 2024, the Senate Committee on State Affairs held an interim hearing covering the charge on maintaining election security. Invited testimony included representatives from the Media Research Center, Zach Vorhies, Ryan Hartwig, the American Institute for Behavioral Research and Technology, Capital Research Center, The Heritage Foundation, the Texas Secretary of State, and Texas Eagle Forum.

1. Media Research Center

Dan Schneider, vice president of the Media Research Center (MRC), discussed the MRC's study of the influence of technology companies on elections. He described efforts by Google and Facebook to manipulate voters and censor news to promote preferred candidates. He said that these companies claim to fight misinformation but in reality attempt to influence election results, and that company standards are sometimes ignored in order to do so.

Schneider discussed MRC research showing that political ads for Republican candidates are taken down at far greater rates than ads for Democratic candidates. He expressed that Google's algorithms are specifically designed to achieve certain political outcomes that are articulated by corporate leadership.

Schneider said that subpoenas could be used to investigate violations of common carrier laws, specifically discrimination based on political views, race, and religion. He said that access to internal documents might shed light on the question of whether conservative groups do not get as much advertising for their money.

2. Zach Vorhies

Zach Vorhies, a former senior software engineer at Google, said that he worked with Project Veritas in 2019 to inform the public about Google's plan to use the "machine learning fairness" artificial intelligence (AI) program to censor news and interfere with upcoming elections. He described the program's algorithmic mechanisms and said that its stated goal is to align public

³⁹ Attorney General Ken Paxton Sues School District for Illegal Electioneering with Public Tax Money, <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-sues-school-district-illegal-electioneering-public-tax-money>.

⁴⁰ See e.g. NDCDFW Staff, *AG Paxton sues more local school districts accusing them of electioneering*, March 1, 2024, <https://www.nbcdfw.com/news/local/ag-paxton-sues-more-local-school-districts-accusing-them-of-electioneering/3477107/>; and, Ikram Mohamed, *Texas AG Ken Paxton sues Denton principals for electioneering on district emails*, Texas Tribune (Feb. 23, 2024), <https://www.texastribune.org/2024/02/23/ken-paxton-sue-denton-isd-texas/>.

attitudes with Google's corporate values. He said Google's news outlet rankings were biased in favor of media organizations sympathetic to the Democratic Party and that the company "blacklisted" certain news topics.

Vorhies discussed the possibility and potential costs of subpoenaing information from Google related to media outlet rankings, blacklists, and machine learning fairness. He added that all Google searches done in Texas could be proxied through a specific Texas server and discussed current law governing state legal actions against Google.

3. Ryan Hartwig

Ryan Hartwig, a former content moderator at Facebook, said that he personally witnessed Facebook's biased censorship practices and that he covertly filmed these practices using a camera provided by Project Veritas. He discussed cases when Facebook instructed him to censor political videos and breaking news, as well as evidence of government wrongdoing.

He said that Facebook routinely takes down certain political ads and that those actions should be considered in-kind contributions to opposing candidates. Hartwig suggested that technology companies should have local liaisons in Texas to ensure compliance with election laws.

4. American Institute for Behavioral Research and Technology

Robert Epstein, senior research psychologist for the American Institute for Behavioral Research and Technology (AIBRT), discussed his research on the influence of large technology companies on American elections. He said Google's practices can affect election outcomes. He said that Google sends voter registration reminders to Democrats at 2.5 times the rate it sends them to Republicans. He discussed Google's manipulation of search results designed to be biased in favor of the political left and the company's promotion of those results and of certain videos to Texas voters. He said monitoring Google could lead to a decrease in its biased practices.

Epstein discussed AIBRT's functions and its research stating that AIBRT collects data from thousands of adults and children nationwide. He highlighted the importance of studying ephemeral data, specifically search suggestion data and informed the committee that research has shown that biased search suggestions can transform a 50-50 public split on an issue to a 90-10 split. Epstein said that Google might not expect to turn Texas into a Democratic majority state but that it has made it less Republican.

Epstein also discussed the subconscious influence of technology platforms on children. Epstein noted the vulnerability of children to manipulation, particularly through online videos that target and influence children without their parents' knowledge.

5. Capital Research Center

Scott Walker, president of Capital Research Center, testified before the committee on the influence of foreign money on American elections. He described foreign individuals and companies that provide financial support to Democratic Party candidates and causes. He said public charities, such

as the Voter Participation Center, violate laws prohibiting partisan election work by charitable organizations. He said Texas is a major target of partisan voter turnout campaigns in 2024 and discussed Mark Zuckerberg's use of "Zuck Bucks" to fund election administration efforts.

6. The Heritage Foundation

Daniel Cochrane, senior research associate of The Heritage Foundation, said that large technology companies use their power to shape and influence elections by promoting biased content. He recommended that the committee investigate whether technology platforms are complying with election laws before the November 2024 general election. He discussed potential violations by technology platforms of election laws that prohibit corporations from engaging in political activities. He recommended the crafting of legislation requiring large technology companies to disclose any factors they use to convey information to the public and to mitigate the impacts of their algorithms on elections.

Cochrane said companies deny having influence on elections or claim that their algorithms made unfortunate errors and that opaque internal company policies and proprietary nature of algorithms make judgments about corporate intentions impossible.

Cochrane said that Google's influence is greatest when political margins are the smallest and that technology platforms have effects beyond skewing election outcomes, such as in the way that a social media platform like TikTok shapes the political views of young people. He also noted Google's increasing employment of AI technology to censor political ads.

7. Texas Secretary of State

Christina Adkins, director of elections for the Texas Secretary of State, described the countywide polling place program and said that it allows eligible voters to vote at any polling location in their county of residence, rather than only at their assigned precinct. She said that 96 counties in Texas, comprising about 83 percent of registered voters, currently participate in the program. Adkins said that electronic pollbooks must be connected to the Internet to facilitate countywide voting but that since voting devices may not be connected to the Internet, electronic manipulation is impossible. She said that Texas election laws promote transparency but that currently goals to promote transparency are in conflict with maintaining ballot secrecy. She said that personally identifiable information, by law, must be excluded from disclosed ballot information but that what in statute counts as personally identifiable information is broader than intended.

Adkins discussed weaknesses she sees in the countywide polling place program, specifying that concerns about auditing, reporting, and ballot secrecy could be addressed within the program. She said elimination of countywide voting would necessitate increases in the number of polling locations at the county level, and that redrawing precincts to make them larger might be one solution.

Adkins described problems resulting from the passage of S.B. 924, 88th Legislature, Regular Session, 2023. Adkins said that S.B. 924 repealed statutory language that allowed counties to merge tiny voting precincts with adjacent large precincts and said that the bill effectively created

more polling locations. She outlined the possibility that individual votes from smaller precincts could be determined through a process of elimination. She also discussed how allotted numbers of polling locations might be determined according to state representative districts rather than according to precincts as a way to decrease the variability of polling location numbers between high-density and low-density population areas.

She stated that implementing precinct-only voting could make it difficult for voters in some counties to find voting locations or for those counties to secure poll workers, and that certain factors, such as paper-based systems, can delay election reporting. Adkins discussed the challenges facing a state the size of Texas in storing large numbers of physical ballots. She said that she believes local administration is a strong feature of the election process and that maintaining reviewable records locally ensures the accuracy of audits. She also highlighted the ease of storing electronic ballots at the state level in comparison to physical ballots.

On the topic of illegal electioneering, Adkins described instances in which individuals, school districts, and cities use state resources to improperly affect elections. She said that electioneering practices are often associated with bond elections. She described instances in which students were given handouts detailing bond packages, school districts sent emails to community members and employees encouraging them to vote in certain ways, and voters and employees complained of feeling pressured to vote in certain ways.

8. Texas Eagle Forum

Beth Biesel, election integrity chair of the Texas Eagle Forum, disputed the perceived advantages of the countywide polling place program. She asserted that recent weather issues in Dallas County revealed the unviability of countywide voting. She insisted that the voting process in Texas should be secure, transparent, verifiable, and accessible to all and that countywide voting does not meet these criteria. Biesel said that countywide voting necessitates the use of electronic pollbooks, which makes it easier for individuals to vote more than once and allows records to be manipulated; disenfranchises voters due to the unreliability and inflexibility of electronic pollbooks; precludes hand counting options; requires expensive equipment; centralizes the voting process and thereby makes it more vulnerable to infiltration; does not necessarily result in higher voter turnout; engenders low trust in local precincts; and violates ballot secrecy, potentially making it unconstitutional. Biesel recommended eliminating countywide voting and returning to precinct voting and a paper-based ballot and tabulation system.

Biesel said that electronic pollbooks operate through Wi-Fi and that they, therefore, can be electronically manipulated, and discussed ways votes and voter data can be manipulated other than through Internet connections. She described the dangers of ballot image manipulation and reiterated her concerns about the complexity and opacity of countywide voting. She also claimed that chain of custody protocols for ballots are often not followed and that poll workers are typically elderly and that the introduction of electronic poll books and other complex electronic devices to the voting process caused many to quit.

Biesel expressed her support for simplifying the voting system and returning to hand counting votes, citing her concerns over the lack of legal enforcement actions in cases of election law violations.

9. Honest Elections Project

Jacqueline Doyer, legal policy director for the Honest Elections Project, said that countywide voting presents unique challenges. She described reconciliation and county election audit processes. She discussed issues specific to individual polling locations and cited an instance in Dallas County in which votes contained on a flash drive device were never tabulated. She expressed support for the legislature's new reconciliation requirements at the countywide level and described the difficulties that countywide voting presents in regard to data collection and completed reconciliations. She said that pollbook records are updated frequently and recommended that they be made available for review at regular intervals for transparency purposes.

Doyer discussed the possibility of total voting process transparency and discussed streamlining the election audit processes. She said that in the course of her audits, she did not find that election administrators in small counties had more difficulty reporting data than large counties did. She explained that audits prior to 2021 were internal to counties and described the randomized county audit process that has been in place from 2021 to the present. Finally, she said that she found evidence of human error but no evidence of manipulation in her audits.

10. Office of the Attorney General

Josh Reno, deputy attorney general for criminal justice, testified on the topic of illegal electioneering, describing electioneering complaints regarding school districts and employees who use state resources to encourage people to vote in certain ways. He said that certain areas of Texas law have not adapted to the electronic age and that statutes should be updated to clearly define what counts as a state resource.

Reno described seven different criminal actions that have been filed related to electioneering and discussed unintentional and intentional electioneering violations. He asserted that the law has not caught up to technological advances, and discussed persons who continue to use state resources to electioneers even after being warned not to do so. Reno discussed investigation and enforcement procedures regarding school districts and employees found to have engaged in electioneering.

C. Recommendations

The Committee received compelling testimony on Big Tech's manipulation of information and messaging to increase profits and advance a social agenda. The Committee recommends that the Legislature pass further legislation that would encourage companies to present all viewpoints in an unbiased manner.

The Committee has seen foreign influence enter Texas through foreign donations to local ballot initiatives. The Committee recommends that the Legislature pass measures banning foreign money

from local ballot initiatives which would align those donations with existing bans on foreign donations to candidates.

The Committee recommends the need for the increase in the detail of data that counties must report and mandating that measures are taken to increase accuracy.

In addition, the Committee recommends the need for additional detail in the electioneering statutes to clarify for local governments that they cannot advocate for specific candidates or ballot initiatives. An enhanced penalty is also needed for electioneering if committed by a local official.

CHARGE NO. 2

Social Media & Protecting Children: *Study the impact of social media use on children. Review current mechanisms in place to protect minors online. Monitor the implementation of House Bill 18, 88th Legislature, relating to the protection of minors from harmful, deceptive, or unfair trade practices in connection with the use of certain digital services and electronic devices, including the use and transfer of electronic devices to students by a public school. Make policy recommendations to further protect Texas children online.*

A. Background

Social media use is widespread among all age groups. While the use of social media can foster learning, self-expression, and positive connection, it can harm mental health, impede developmental milestones, and threaten physical safety, especially for children.⁴¹

According to a Pew Research Center survey, 95 percent of teenagers ages 13 to 17 reported using a social media platform, more specifically YouTube, TikTok, Instagram, and Snapchat.⁴² Some even reported using these sites “almost constantly” with more than half saying that it would be difficult for them to give up social media.⁴³

Over the last decade, there has been an increase in evidence pointing to the negative impacts of social media on adolescents.⁴⁴ In a study of American teens ages 12 to 15, those who used social media over three hours each day faced twice the risk of having negative mental health outcomes, including depression and anxiety.⁴⁵

Social media algorithms are programmed to promote what the user is interested in. If an adolescent searches for a type of mental health condition such as depression or suicide, the algorithm will feed them information of those topics.⁴⁶ Young users can easily access extreme, inappropriate, and harmful content. In certain cases, deaths have been linked to social media content on suicide and self-harm such as “cutting,” partial asphyxiation, and risk-taking challenges.⁴⁷

Children are going through a highly sensitive developmental period between the ages of 10 and 19 when physical and cognitive development are forming a sense of identity and self-worth.⁴⁸ Frequent social media use may be associated with distinct changes in the developing brain,

⁴¹ Kathy Katella, *How Social Media Affects Your Teen’s Mental Health: A Parent’s Guide*, Yale Medicine (June 17, 2024), <https://www.yalemedicine.org/news/social-media-teen-mental-health-a-parents-guide>.

⁴² Emily A. Vogels & Rise Gelles-Watnick, *Teens and social media: Key findings from Pew Research Center surveys*, Pew Research Center (April 24, 2023), <https://www.pewresearch.org/short-reads/2023/04/24/teens-and-social-media-key-findings-from-pew-research-center-surveys/>.

⁴³ *Id.*

⁴⁴ *How Social Media Affects Your Teen’s Mental Health: A Parent’s Guide*, Yale Medicine (June 17, 2024).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Social Media and Youth Mental Health*, The U.S. Surgeon General’s Advisory (2023), <https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf>. A Surgeon General’s Advisory is a public statement that calls the American people’s attention to an urgent public health issue and provides recommendations for how it should be addressed. Advisories are reserved for significant public health challenges that require the nation’s immediate awareness and action.

potentially affecting such functions as emotional learning and behavior, impulse control, and emotional regulation.⁴⁹

The Texas Legislature has responded to the growing concerns and evidence that social media use is harming children and the need for more parental oversight and platform accountability.

1. The SCOPE Act

During the 88th Regular Legislative Session, the Legislature passed H.B. 18 or The Securing Children Online through Parental Empowerment Act (SCOPE Act). Taking effect September 1st of 2024, H.B. 18 allows parents and guardians to supervise and control privacy and account settings on behalf of a minor.⁵⁰ The bill restricts not just social media companies, but also digital service providers broadly (with exceptions⁵¹), from collecting data on minors.⁵² It also requires providers to ban targeted advertising, require parental consent for financial transactions, and block access to content related to suicide, substance abuse or addiction, bullying, and grooming.⁵³

Prior to the effective date of The SCOPE Act, NetChoice and the Computer and Communications Industry Association filed suit to preemptively block the law, claiming that the legislation restricted free expression.⁵⁴ The federal judge sided partly with NetChoice, issuing an injunction against the law's monitoring and filtering requirements while the case continues.⁵⁵ The judge ruled that the law infringed on the constitutional rights of social media companies and users, including minors.⁵⁶ The data collection rules and age verification requirements remain in place at this time.

2. H.B. 1181

According to The National Center on Child Exploitation, pornography is proven to be addictive, with research showing that adolescents are more susceptible than adults to addiction to these

⁴⁹ *Id.*

⁵⁰ Tex. H.B. 18, 88th Leg., R.S. (2023).

⁵¹ Exceptions under The SCOPE Act include: state agencies; small businesses, as defined by the Small Business Administration; financial institutions or data subject to Title V, the Gramm-Leach-Bliley Act; covered entities or business associates governed by federal laws such as the Health Insurance Portability and Accountability Act and the Health Information Technology for Economic and Clinical Health Act; institutions of higher education; digital service providers who process user data for express purposes of employment or education services; a digital service provider's facilitation of e-mail or direct messaging services as long as the digital service provides only those services; a digital service provider's facilitation of access to news, sports, commerce, or content primarily generated or selected by the digital service provider; chat, comment or other interactive functionality that is incidental to the digital service; internet service providers, search engines or cloud service providers, unless they are responsible for the creation of harmful material or other content described by Section 509.053(a) of the act. For example, when an Internet service provider, search engine or cloud service provider solely supplies the Internet access or connection, allows for downloads, gives access to software, or otherwise serves a website, it is generally not considered actionable since they often do not have control over the harmful content in question.

⁵² Tex. H.B. 18 (2023).

⁵³ *Id.*

⁵⁴ Marley Malenfant, *What is the SCOPE Act? New Texas law requires parental approval over kids' social media*, Austin American Statesman (Sept. 13, 2024), <https://www.statesman.com/story/news/state/2024/09/13/scope-act-texas-hb-18-social-media-children-personal-data-online-judge-robert-pitman-block/75178891007/>.

⁵⁵ *Id.*

⁵⁶ *Id.*

harmful materials.⁵⁷ Exposure to explicit content in childhood is proven to increase the demand for child pornography, child exploitation, human trafficking, and prostitution.⁵⁸ Children who use pornography are prone to engaging in behaviors that place them at risk of sexual victimization, leading to mental health disorders.⁵⁹

To protect children from viewing pornography online, the Legislature passed H.B. 1181 in the Regular Session of the 88th Legislature. The bill requires distributors and publishers of explicit content to age verify with a government-issued ID or a reasonable alternative in order to view content.⁶⁰ It also requires manufacturers to enable an optional filter on electronic devices in Texas that would block minors from accessing these materials.⁶¹

In response to the passage of this legislation to protect children, pornography distributors filed suit to keep the bill from taking effect.⁶² The U.S. Court of Appeals for the Fifth Circuit ruled that Texas' age verification requirement does not violate the First Amendment. The pornography companies have appealed the case to the U.S. Supreme Court, which is set to be argued on January 15, 2025.

B. Interim Hearing

On October 17, 2024, the Senate Committee on State Affairs held an interim hearing covering the Social Media and Protecting Children charge provided by the Lieutenant Governor. Invited testimony included the Office of the Attorney General, Children's Advocacy Centers of Texas, No Trafficking Zone, and Dr. Lindy McGee.⁶³

1. Office of the Attorney General

Ryan Baasch, Associate Deputy Attorney General for Civil Litigation for the Office of the Attorney General, provided updates on the implementation progress of H.B. 18 from the 88th Legislature, Regular Session, 2023, which protects minors from harmful, deceptive, or unfair online trade practices. He said that the bill allowed the OAG to take legal action against TikTok for selling the personal data of minors. H.B. 18 includes provisions that require electronic services to prevent minors from making online purchases and stipulate that legal guardians have the ability to restrict financial transactions by minors online. Baasch said that the provisions are meant to provide two layers of protection for minors.

Brent Dupre, director of Law Enforcement for the Office of the Attorney General, described the activity of the OAG Internet Crimes Against Children Program (ICAC). He said that limited resources and high case volume impair ICAC's ability to function proactively. He said that in 2024

⁵⁷ Tex. H.B. 1181 Author's/ Sponsor's Statement of Intent, 88th Leg., R.S. (2023).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Tex. H.B. 1181, 88th Leg., R.S. (2023).

⁶¹ *Id.*

⁶² *Free Speech Coalition, Inc. v. Paxton*, No. 23-1122 (U.S. filed Apr. 12, 2024).

⁶³ The Committee reached out to TechNet to ask for social media companies to be represented and testify to their efforts, but they did not attend due to the litigation over H.B. 18. TechNet provided a general letter to the Committee the morning of the hearing.

the OAG had over 10,000 contacts conducting education and outreach related to the safety of minors online.

2. Children’s Advocacy Centers of Texas

Christina Green, Chief Advancement and External Relations Officer for the Children’s Advocacy Centers of Texas (CACT), described the exposure to and risks of child sexual abuse materials (CSAM) online. She said that CACT annually service 60,000 minors who are victims of sexual crime. She said that CACT provides comprehensive aid to victimized children and their families to prevent repeat abuse. Green recommended increasing funding to law enforcement to support proactive measures against CSAM and sexual predators, and advised that parents should ensure their child is safe and immediately contact law enforcement if they discover their child has been solicited online.

3. No Trafficking Zone

Jacquelyn Aluotto, co-founder of No Trafficking Zone, said that child trafficking and CSAM enter schools when technology requirements are made mandatory. She described the recent rise in the sexual extortion of minors, and recommended strengthening parental consent and age verification systems.

4. Dr. Lindy McGee

Dr. Lindy McGee, a practicing pediatrician, described social media algorithms aimed at minors that promote unhealthy eating practices and exacerbate mental health issues. She recommended legislation to limit autoplay features on electronic devices as well as restricting personal information mining.

C. Recommendations

The Legislature should continue to study the effects of social media on minors. The Committee recommends that the Legislature consider further legislation to protect minors via age gating, prevent their exposure to harmful materials, protect mental health, and further prevent targeting via algorithms on social media platforms.

CHARGE NO. 3

Protecting Texas Land and Assets: *Evaluate strategic land and asset acquisitions in Texas by foreign entities that threaten the safety and security of the United States. Further, evaluate large-scale purchases of single-family homes by domestic entities and its impact on housing affordability for Texas families. Make recommendations to ensure Texans are secure from foreign threats and homes are affordable in our state.*

A. Background

1. Foreign Land and Asset Acquisitions

Protecting Texas and American security begins with securing its land and property from adversarial countries. Texas and Maine have the highest amount of foreign-owned property in the country. The amount of agricultural land that is foreign-owned has grown significantly in recent years. According to the United States Department of Agriculture, in 2021 over 40 million acres of agricultural land in the US is owned by foreign investors and companies.

Foreign purchasers of United States agricultural land are required to report such acquisitions under the Agricultural Foreign Investment Disclosure Act (AFIDA) of 1978. Reports can be submitted to the U.S. Department of Agriculture (USDA) directly or at the more than two thousand⁶⁴ local Farm Service Agency (FSA) offices. Reports are submitted in paper format, and this labor intensive and decentralized process creates a system that is prone to error and lacks enforcement. USDA does not have the resources to adequately train local FSA personnel, develop an online system, enforce compliance by foreign purchasers of property, or block purchases of property that may pose a national security threat.⁶⁵

The Committee on Foreign Investment in the United States (CFIUS) is comprised of several federal agencies with oversight of foreign purchases of American land and assets. Authorized by Section 721 of the Defense Production Act (50 USC §4565), CFIUS may review acquisitions of American assets that pose a national security threat and recommend to the President that certain purchases be blocked.⁶⁶ USDA, the federal agency with the most information on foreign ownership of U.S. land, is not a member of CFIUS, however. Moreover, the limitations mentioned above in AFIDA reporting preclude timely and complete sharing of information between USDA and AFIDA.⁶⁷

At least 22 states have responded recently in a variety of ways to the issue of foreign ownership of American property. The stringency and scope of the laws vary. From studies to disclosure to potential divestment, states have given themselves various tools to address foreign ownership.

⁶⁴ Foreign Investments in U.S. Agricultural Land, Government Accountability Office (January 2024), page 26, <https://www.gao.gov/products/gao-24-106337>.

⁶⁵ *Id.*

⁶⁶ Committee on Foreign Investment in the United States, Congressional Research Service (December 9, 2024), <https://crsreports.congress.gov/product/pdf/IF/IF10177>.

⁶⁷ Foreign Investments in U.S. Agricultural Land, Government Accountability Office, page 26.

Regarding scope, the laws differ in the extent of property covered, from agricultural land to strategic locations to all real property.⁶⁸

Texas is among the more permissive states in that it expressly allows for foreign ownership of property (Property Code, §5.005).⁶⁹ The state also is in the highest AFIDA tier of foreign ownership of agricultural land at greater than 2.4 percent of all private agricultural land.⁷⁰ Roughly 3.4 percent of all privately-held agricultural land in the state is foreign owned,⁷¹ making Texas rank first among the states in overall number of foreign-owned agricultural acres (5.5 million out of 43.4 million nationally⁷²) and 19th in foreign-owned agricultural land as a percent of total private agricultural land.⁷³ According to one analysis, a number of Texas counties are greater than 10 percent foreign owned, with the highest concentrations of foreign ownership of agricultural land being in Southeast Texas, presumably related to the timber industry (Tyler County, 59.6 percent foreign owned; Polk County, 49.6 percent foreign owned; Newton County, 48 percent foreign owned; Hardin County, 39.9 percent foreign owned.⁷⁴

While foreign ownership of Texas property is not always concerning on its face, it is troubling when countries like China or other hostile countries purchase agricultural land and property near critical infrastructure and military installations, potentially threatening our national and food security.

In 2016, Chinese billionaire Sun Guangxin, through subsidiaries he owned, purchased up over 140,000 acres of property in Val Verde County near Laughlin Air Force Base, a training ground for military pilots.⁷⁵ He set aside 15,000 acres of land for one of his companies to oversee the construction of a wind farm that could feed into Texas' electric grid, the Electric Reliability Council of Texas (ERCOT).⁷⁶ His ties to the Chinese Communist Party, including his company hiring army and government officials, and his personal relationship with authorities in China's Xinjiang province, drew the attention of local and national politicians.⁷⁷

The Texas Legislature responded in 2021 by passing the Lone Star Infrastructure Protection Act.⁷⁸ The purpose of the legislation is to prevent business entities associated with hostile nations or

⁶⁸ State Regulation of Foreign Ownership of U.S. Land: January 2023 to July 2024, Congressional Research Service (Aug. 28, 2024), <https://crsreports.congress.gov/product/pdf/LSB/LSB11013>.

⁶⁹ Micah Brown and Nick Spellman, "Statutes Regulating Ownership of Agricultural Land," National Agricultural Law Center (Dec. 2, 2024), <https://nationalaglawcenter.org/state-compilations/aglandownership/>.

⁷⁰ Foreign Holdings of U.S. Agricultural Land Through December 31, 2022, Farm Service Agency, U.S. Department of Agriculture, page 10,

https://www.fsa.usda.gov/sites/default/files/documents/2022_afida_annual_report_12_20_23.pdf.

⁷¹ Foreign Holdings of U.S. Agricultural Land, USDA, page 20.

⁷² Foreign Holdings of U.S. Agricultural Land, USDA, page 26.

⁷³ Foreign Holdings of U.S. Agricultural Land, USDA, page 19-20.

⁷⁴ Hope O'Dell and AJ Caughey, "State lawmakers are concerned about Chinese ownership of US land, but other countries own much more American acreage," *Blue Marble* (Apr. 4, 2024),

<https://globalaffairs.org/bluemarble/china-foreign-land-ownership-explainer#:~:text=In%202011%2C%2026%20million%20acres,acreage%20grew%20to%2043.4%20million>.

⁷⁵ John Hyatt, *Why A Secretive Chinese Billionaire Bought 140,000 Acres of Land in Texas*, *Forbes* (Aug. 9, 2021), <https://www.forbes.com/sites/johnhyatt/2021/08/09/why-a-secretive-chinese-billionaire-bought-140000-acres-of-land-in-texas/>.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Tex. S.B. 2116, 87th Leg., R.S. (2021).

foreign adversaries from accessing the Texas electricity grid and other critical infrastructure, including computer networks and waste treatment systems.⁷⁹ Foreign adversaries are defined in the code of federal regulations as foreign governments or foreign non-government persons who have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons as determined by the U.S. Secretary of State.⁸⁰ Currently, the only federal law regarding foreign investment is the Agricultural Foreign Investment Disclosure Act of 1978 which only aims to regulate foreign investment through disclosure of self-reported data.

Last session, the Texas Legislature built upon the Lone Star Infrastructure Protection Act by passing S.B. 2013, a prohibition against organizations associated with hostile foreign powers from purchasing infrastructure that is then connected to the grid.⁸¹

Additionally, the Texas Senate passed S.B. 147 which aimed at protecting private property rights from being controlled by entities from adversarial nations. While the bill faced significant pushback, the bill made clear that the prohibitions do not apply to United States citizens and lawful permanent residents, including dual citizens.⁸²

Texas should continue to pursue protective measures against adversarial nations, while also balancing private property rights of seller and buyer.

2. Housing Affordability

Home ownership is a vital part of the American Dream. Unfortunately, the dream of owning a home is becoming increasingly difficult to realize.

In early 2024, housing affordability hit its lowest level in the U.S. since 1985.⁸³ Housing affordability is defined as the ability of someone with a median family income to afford median-priced housing.⁸⁴ The affordability crisis is mostly due to record-setting home prices and rapidly rising mortgage rates.⁸⁵ The Federal Reserve Bank of San Francisco estimated that remote work policies during the COVID-19 pandemic accounted for more than half of home price increases from November 2019 to November 2021.⁸⁶ This period coincided with accelerated domestic migration, of which Texas and its metro areas were top destinations.⁸⁷

In addition, housing prices were heightened by an already existing housing shortage across the country, which was fueled by the decline in housing construction after the 2008 financial crisis.⁸⁸ The National Association of Realtors published a study that shows the greatest shortage is in homes

⁷⁹ *Id.*

⁸⁰ 15 CFR § 7.4.

⁸¹ Tex. S.B. 2013, 88th Leg., R.S. (2023).

⁸² Tex. S.B. 147, 88th Leg., R.S. (2023).

⁸³ David Green, *Housing affordability gap hits Texas*, Texas Comptroller of Public Accounts (Oct. 2024), <https://comptroller.texas.gov/economy/fiscal-notes/economics/2024/aff-housing/>.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

that middle class buyers can afford,⁸⁹ with Texas facing an estimated shortage of 306,000 homes needed to bridge the gap.⁹⁰

In August 2024, the Texas Comptroller of Public Accounts published a report examining the factors leading to the rapid decline in affordability in Texas.⁹¹ The report found that affording a home is increasingly difficult not just in Texas, but across the country.⁹² Between 2021 and 2023, the U.S. experienced its fastest-ever deterioration in housing affordability, largely due to the surge in home prices and rapidly rising interest rates.⁹³ According to data from Texas A&M University's Texas Real Estate Research Center, median home prices in Texas rose by 40 percent between 2019 and 2023. After a period of rapidly rising inflation rates, mortgage rates rose to a 23-year high of 7.79 percent in October 2023.

The report also found that there is a likely underinvestment in housing in Texas. Years of underinvestment in the U.S. housing supply exacerbated housing price pressures following the 2008 financial crisis.⁹⁴ Though building permits in Texas fell substantially, the decline was less pronounced compared with other states. Texas' building permits have led all other states since the financial crisis. In 2023, Texas was 306,000 homes short of what was needed, according to an analysis by Up for Growth, a nonprofit organization that focuses on housing policy. Lack of investment is particularly harmful to lower and middle income buyers, as well as first-time buyers.

Other costs associated with owning a home have risen sharply. Average homeowners' insurance rates in Texas, for example, rose by 6.9 percent in 2021 and 11.8 percent in 2022.⁹⁵ Factors such as interest rates and an individual's personal credit score, associated with the cost of borrowing for a home purchase, can serve as a barrier for many prospective buyers.

While there is a general willingness to fix the supply and affordability problem, there is no universal solution. Relaxing zoning regulations are one suggested solution. Zoning determines the type of housing that can be built in certain locations. Some argue these zoning regulations drive up home prices and rents by limiting housing development in areas where people most want to live. Alternatively, as many view housing to be both a consumption good and an investment, there are those who staunchly oppose zoning regulations near existing homes for fear that it would impact the neighborhood structure and even possibly negatively affect property values.⁹⁶

⁸⁹ Melissa Dittmann Tracey, *Study: Middle-Income Buyers Suffer Most in Housing Shortage*, National Association of Realtors (June 8, 2023), <https://www.nar.realtor/magazine/real-estate-news/study-middle-income-buyers-suffer-most-in-housing-shortage>.

⁹⁰ *2023 Housing Underproduction in the U.S.*, Up for Growth (2023), <https://upforgrowth.org/apply-the-vision/2023-housing-underproduction/>.

⁹¹ *The Housing Affordability Challenge*, Texas Comptroller of Public Accounts (Aug. 2024), <https://comptroller.texas.gov/about/media-center/news/20240827-texas-comptroller-glenn-hegar-releases-study-on-states-housing-affordability-challenge-1724699586337>.

⁹² *Texas Comptroller Glenn Hegar Releases Study on State's Housing Affordability Challenge*, Texas Comptroller of Public Accounts (Aug. 27, 2024), <https://comptroller.texas.gov/about/media-center/news/20240827-texas-comptroller-glenn-hegar-releases-study-on-states-housing-affordability-challenge-1724699586337>.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

3. Institutional Buyers

There has also been a growing concern that institutional buyers or investors, are contributing to the housing shortage and affordability crisis. Across the country, institutional and large corporate investors represent a growing percentage of owners of single-family homes.⁹⁷

Institutional investors are single, nonindividual entities such as limited liability companies (LLCs), limited liability partnerships (LLPs), and real estate investment trusts (REITs) that have portfolios of 1,000 or more housing units.⁹⁸ Unlike traditional, smaller-scale "mom and pop" landlords, these investors often can outbid prospective individual homeowners with all-cash offers and fast-track their purchases by waiving common steps in the buying process that would be too risky for individual buyers to skip.⁹⁹

While there is no universally accepted definition, the U.S. Department of Housing and Urban Development categorizes investor purchases of single-family homes into small, medium, large, and institutional investors:

- **Small investors:** investors with portfolios containing one to nine units generally and typically consist of mom-and-pop investors: individuals who own and operate properties either through traditional leases or through popular platforms such as Airbnb and Vrbo.
- **Medium investors:** investors with portfolios containing 10 to 99 units.
- **Large investors:** investors with portfolios containing 100 to 999 units.
- **Institutional investors:** investors with portfolios containing more than 1,000 units, and can include limited liability corporations, limited liability partnerships, real estate investment trusts, and other entities.¹⁰⁰

A study in 2021 by the National Association of Realtors found that institutional buyers¹⁰¹ accounted for 28% of purchases in Texas and accounted for even higher shares in some counties such as Dallas County (43%) and Tarrant County (52%).

Institutional investors have various motivations. Some may seek to hold onto the home as a rental unit and maximize its profitability, while others may be interested primarily in capital gains from home value appreciation.¹⁰² There are also trading platforms that may seek to scale purchases in markets where they can profit from quickly reselling properties without investing in improving them.¹⁰³

When institutional investors concentrate their activity in a local market, the effects can be significant. In addition to preventing individual buyers from purchasing homes, investor activity lowers the overall availability of homes for purchase and raises prices for the remaining homes in

⁹⁷ *Institutional Investors Outbid Individual Homebuyers*, U.S. Department of Housing and Urban Development (2023), <https://www.huduser.gov/portal/periodicals/em/winter23/highlight1.html>.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ The National Association of REALTORS® defines institutional investors as companies, corporations, or limited liability companies.

¹⁰² *Institutional Investors Outbid Individual Homebuyers*, <https://www.huduser.gov/portal/periodicals/em/winter23/highlight1.html>.

¹⁰³ *Id.*

the market.¹⁰⁴ The effects of these buyers can also have material impacts for renters in investor-owned properties, including additional costs and fees and issues related to unit conditions and maintenance.¹⁰⁵

These concerning figures prompted the 88th Legislature to calculate the scale of this activity and study whether it needed to be curtailed. S.B. 1979¹⁰⁶ commissioned an annual report from the Texas Real Estate Research Center at Texas A&M University to track institutional buyers' moves in the state's housing market.¹⁰⁷ The results of that study found that the sharp increase in single-family home purchases from the spring of 2020 to the spring of 2022 was an anomaly driven by Federal Reserve intervention in the mortgage market and the unprecedented surge of economic activity caused by fiscal stimulus payments.¹⁰⁸

The results of the study also indicated that legislators were correct to be concerned about the impact of large investors on the housing market, however hindsight research now shows that small investors still own the vast majority of single-family rental properties in Texas and large real estate investor trusts (REITs) own only six percent of the single-family rental market.¹⁰⁹

B. Interim Hearing

On May 29, 2024, the Senate Committee on State Affairs held an interim hearing covering the charge of protecting Texas land and assets. Invited testimony included the Center for Security Policy, the Texas Association of Builders, Asian Americans Advancing Justice, and the Texas Real Estate Research Center at Texas A&M University.

1. Center for Security Policy

Christopher Holton, senior analyst for the Center for Security Policy, discussed prior legislative efforts to restrict ownership of land by foreign adversaries. He discussed the threats posed by China, Iran, Russia, and North Korea to the national security and safety of the U.S. He said that China pursues its geopolitical goals in part through strategic acquisitions of U.S. land and assets by Chinese-backed companies and Chinese Communist Party (CCP) members. He said that foreign investment in the U.S. by Chinese companies should be treated differently than investments by companies based in other countries, such as Canada or Germany, because Chinese companies are invariably controlled by the Chinese government, which he stressed is hostile toward America. Holton said that Chinese individuals and entities that conduct business abroad are subject to the totalitarian control of the Chinese government.

Referencing the Lone Star Infrastructure Protection Act (2021), he said legislation can be structured to restrict land acquisitions by foreign adversaries without adversely affecting permanent residents, realtors, and other private individuals and entities. He said preventing foreign

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ This bill was one of many that were vetoed due to call to pass a property tax cut package.

¹⁰⁷ Tex. S.B. 1979, 88th Leg., R.S. (2023).

¹⁰⁸ *Written testimony and report of Gerald Klassen, Research Data Scientist for the Texas Real Estate Research Center for Protecting Texas Land and Assets Charge: Hearing Before the S. Comm. on State Affairs, 2024 Leg., 88th Interim (May 29, 2024).*

¹⁰⁹ *Id.*

adversaries from owning arable U.S. land is vital to protecting domestic food supplies and that ownership of land by foreign adversaries should also be prohibited in order to protect critical infrastructure and military installations.

Holton said that he would not oppose the idea of restricting sales of land used for certain purposes or restricting land sales in certain areas, rather than restricting sales to persons of certain nationalities. He said legislation should specifically prevent foreign adversary ownership of land near military installations.

Discussing the Committee on Foreign Investment in the United States (CFIUS), the federal government's interagency committee that reviews foreign land transactions, Holton said that the committee has become politicized and has failed to prevent certain foreign land acquisitions in other states. In outlining the history and development of the organization, he said that CFIUS has never been completely apolitical, but that since the end of the Cold War, national security is no longer a bipartisan issue and that that fact has affected CFIUS actions. Holton said that CFIUS makes recommendations and weighs in on land transactions but does not act with the power of law.

Holton said that the federal list of hostile nations has been stable in recent years and that that list is determined based on objective criteria. He added that foreign adversaries have never been welcome as parties of influence in U.S. economic and national security systems and that Texas needs to act swiftly in the face of federal refusals to do so.

2. Texas Association of Builders

Scott Norman Jr., chief executive office for the Texas Association of Builders (TAB), discussed the possible unintended consequences of foreign-owned land restrictions on the real estate industry. He said that private individuals and companies should not be responsible for aiding restrictions enforcement. He expressed concern that certain restrictions could result in discrimination against foreign families purchasing single-family homes or other residential properties. He added that private property rights restrictions should be tailored narrowly.

Testifying on the topic of large-scale purchases of single-family homes, Norman said that the committee should exercise caution in determining whether the state has a compelling interest to limit purchases of single-family homes. He said that TAB is strongly opposed to any restrictions on the free market. He described current housing market trends and the increasingly strong demand for single-family housing. He expressed concern regarding negative impacts that legal restrictions on the housing market might have on buyers and sellers. He also discussed demographic changes that are reflected by the fact that young Americans are less likely to want to own homes.

3. Asian Americans Advancing Justice

John Yang, president and executive director of Asian Americans Advancing Justice, expressed concerns about the resurgence of support for alien land laws in Texas. He said that these laws seek to restrict people of specific nationalities from owning land and that while the Chinese, Iranian, Russian, and North Korean regimes are certainly despicable, clear distinctions should be made between regimes and individuals. He said that Americans in the past have been the victims of state-sanctioned discrimination carried out in the name of national security. He cited two examples: the

internment of Japanese Americans during World War II and the targeting of people of the Muslim and Sikh faiths in the wake of 9/11. He discussed a misconception that Asian Americans maintain allegiance to foreign governments even when living in America and described racially motivated hate that Asian Americans have continued to face throughout the country. He said that the committee should consider whether land ownership legislation truly addresses the threats at hand. He said that most imminent threats to critical infrastructure are related to computer hacking, which makes physical proximity irrelevant, and noted that China accounts for less than one percent of foreign-owned land in the United States. He expressed concern that proposed alien land legislation could magnify and exacerbate the stigmatization and stereotyping of certain peoples.

Yang confirmed that Asian Americans Advancing Justice is unaffiliated with the CCP. He discussed how laws that discourage immigrants from owning land might be counterproductive, and disputed the notion that all Chinese companies are utterly subject to Chinese government control. Yang said that many Chinese companies want to invest in America for purely economic reasons.

Yang said that legislation should not generalize about individuals and that certain factors, such as a person's reasons for being a CCP member, should be considered in context. He continued that the CFIUS offers valuable, though imperfect, policy models. Yang added that foreign investment has traditionally been considered a net benefit to the United States and that it is important to consider whether proposed restrictions on foreign ownership of land will result in barriers to investment in Texas.

Yang addressed a report claiming that the CCP used the Chinese social media platform WeChat to engage in information warfare and organize opposition to S.B. 147 from the 88th Legislature, Regular Session, which would have imposed new foreign land ownership restrictions, expressing concern over any broad conflation of the CCP with groups opposing S.B. 147.

4. Texas Real Estate Research Center at Texas A&M University

Gerald Klassen, research data scientist for the Texas Real Estate Research Center at Texas A&M University, described past reports of large-scale purchases of single-family homes by institutional buyers. He described his own study of large-scale purchases, how buyers are categorized, and the high volume of single family home purchases in 2021. He said that the sharp increase in single-family home purchases from the spring of 2020 to the spring of 2022 was an anomaly driven by Federal Reserve intervention in the mortgage market and the unprecedented surge of economic activity caused by fiscal stimulus payments.

Klassen said that legislators were correct to be concerned about the impact of large investors on the housing market but pointed out that research now shows that small investors still own the vast majority of single-family rental properties in Texas and that large real estate investor trusts (REITs) own only six percent of the single-family rental market. He discussed the advantages of the increase in large REIT ownership of single-family homes and careful monitoring of the single-family rental market would be prudent, especially because certain economic factors might compel investors to sell.

C. Recommendations

1. Texas Land and Asset Security

The Committee recommends that the Legislature should continue to ensure that foreign adversaries are not able to buy property near critical infrastructure or similarly important property.

The Legislature should also look at how it might protect residential purchase while also balancing private property and constitutional due process rights. Other states have tailored legislation targeting foreign acquisitions. Such legislation has been, and may be used as an option in Texas, structured to include specific remedies, such as fines, voiding sales, forfeiture, judicial revocation of licenses and business charters, judicial dissolution of business entities, judicial prohibition of an identified agent of a foreign adversary doing business in the state, and judicially awarded restitution for civil damages for harmed, innocent third parties.¹¹⁰

2. Housing Affordability and Supply

While institutional investors have been found to no longer by the source of frustration in the housing market, there is more that the Texas Legislature can focus on to promote housing affordability and supply.

The Committee recommends that the Legislature continue to study the impact of large-scale purchases of single-family homes by institutional buyers.

The Legislature should look at allowing lot sizes to be voluntarily decreased and promote the increase of housing options such as allowing owners of vacant office buildings in large urban spaces to convert them to multi-family or mixed use properties.

Additionally, the Legislature could consider allowing areas zoned for commercial use to be used for multi-family property or mixed-use residential.

¹¹⁰ Christopher Holton, *States Must Act to Protect American Security From Foreign Adversaries*, Center for Security Policy (Aug. 2024), <https://centerforsecuritypolicy.org/states-must-act-to-protect-american-security-from-foreign-adversaries/>.

CHARGE NO. 4

Responsible Investing: *Study the impact of environmental, social, and governance (ESG) factors on our state's public pensions, with a focus on proxy voting services. Make recommendations to ensure our state's pension systems vote and invest in accordance with their fiduciary responsibility to maximize profit. Additionally, monitor the implementation of Senate Bill 13, 87th Legislature, relating to state contracts with and investments in certain companies that boycott energy companies. Specifically, examine how a company is removed from the list of companies that boycott energy companies when the company ceases to boycott energy companies. Report on how frequently the list maintained by the comptroller is updated and make recommendations to ensure an ongoing accurate list.*

A. Background

1. ESG and Asset Managers

Large financial service firms exercise enormous control over investment markets and public pension plans. BlackRock alone manages almost \$150 billion of Texas retirees' money, including \$24 billion for state and local public pension plans.¹¹¹ The biggest three financial services firms, BlackRock, State Street, and Vanguard, control over \$20 trillion in assets. They are the biggest shareholders in 90% of public companies, and they cast 20-25% of all shareholder votes.

Together, these firms, and many others like them, have come to embrace business metrics and corporate policies that are frequently discussed under the banner of "ESG", which stands for Environmental, Social, and Governance standards. ESG investing, a strategy that focuses on the environmental or social impacts of a company's business and leadership, has proliferated among investment managers in the last several years.¹¹² The growing popularity and reach of ESG investing has begun to affect state pension funds, as major institutional investment managers incorporate it into all investment strategies, even those not marketed as ESG funds.

With all of these firms combined as members of these climate initiatives, these organizations steer policy for literally trillions of dollars in assets. What's more, membership requires commitments to take certain action.¹¹³ This is independent of any evaluation of profit or returns, but just an "off the top" commitment on a policy that has little to do with shareholder returns.

The ESG trend threatens Texas pension beneficiaries, companies, and workers. To the extent ESG investing proves to be an unsound deviation from traditional investment principles, as many expect,¹¹⁴ it jeopardizes the financial wellbeing of Texas retirees. Companies owned and staffed

¹¹¹ See BlackRock's letter to the Senate Committee on State Affairs, September 9, 2022.

¹¹² See Max M. Schanzenbach & Robert H. Sitkoff, *Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee*, 72 Stan. L. Rev. 381, 387-88 (2020).

¹¹³ In joining NZAM, BlackRock committed to "[i]mplement a stewardship and engagement strategy, with a clear escalation and voting policy, that is consistent with our ambition for all assets under management to achieve net zero emissions by 2050 or sooner." See The Net Zero Asset Managers Commitment, www.netzeroassetmanagers.org/commitment/.

¹¹⁴ See, e.g., Bradford Cornell & Aswath Damodaran, *Valuing ESG: Doing Good or Sounding Good?*, SSRN (March 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3557432.

by Texans, especially those in the oil and gas industry, could also find themselves in the crosshairs of investors that prioritize environmental and social goals at the expense of their economic wellbeing. Finally, promoting ESG likely threatens workers by disproportionately pressuring labor-intensive industries and privileging automation.¹¹⁵

2. Proxy Advisors and Voting Services

Proxy advisors are companies that advise large institutional investors on how to vote the shares they own. They purport to provide unbiased, expert advice on shareholder proposals to institutional investors. In America, two proxy advisory firms have taken over the market. Institutional Shareholder Services (ISS), a German company, and Glass Lewis, a Canadian company, which control an estimated 97% of the market.¹¹⁶ This results in the recommendations of these two firms alone, who have no financial interest in the impact these recommendations have on the companies, having an outsized influence over corporate practices and policies in the United States.

These proxy advisory companies adopt "benchmark" policies that function as their default positions on classes of shareholder proposals. ISS told the committee in its December 2022 hearing that their benchmark recommendations are "neutral" and agnostic to policy. Even so, the benchmark voting policies for this year inform their institutional clients that they will "generally vote against" Climate Action 100+ Focus Group companies "in cases where ISS determines that the company is not taking the minimum steps needed to understand, assess, and mitigate risks related to climate change. . . ."¹¹⁷ This is not a neutral policy, and if an institution like a public pension doesn't actively pursue and catch these votes to advise otherwise, their assets may be voted to advance these policies.

Proxy advisory firms do not have a financial stake in the companies for which they provide vote recommendations, they owe no fiduciary duties to the shareholders of those companies, and they are not subject to any regulation. With no requirement to demonstrate that their vote recommendations are tied to shareholder value, proxy advisory firm recommendations are often based on many factors that have no connection whatsoever to shareholder value.

This perennial proxy advisory firm concern continues to intensify as companies are subject to an ever-increasing barrage of shareholder proposals on environmental, social, and political matters. When proxy voting decisions are influenced by factors unrelated to shareholder value, and when corporations are thus pressured to focus and spend resources on items unrelated to shareholder value, shareholder value will undoubtedly suffer over the long term. Many of the "best practices" espoused by proxy advisory firms are, at best, irrelevant to shareholder value. At worst, however, these "best practices" could negatively impact shareholder value and, by extension, hamper the U.S. economy by unduly constraining management. Relatedly, the shaming of public companies on the basis of issues unrelated to value has the potential to threaten capitalism over the long term.

¹¹⁵ *The ESG Bubble: Saving the Planet, Destroying Societies*, StoneX Flow Report (Feb. 2021), <https://www.politico.com/f/?id=00000177-adf8-d713-a777-edfe93f90000>.

¹¹⁶ James K. Glassman and Hester Peirce, *How Proxy Advisory Services Became So Powerful*, Mercatus Center (June 18, 2014), <https://www.mercatus.org/research/policy-briefs/how-proxy-advisory-services-became-so-powerful>.

¹¹⁷ ISS United States Proxy Voting Guidelines Benchmark Policy Recommendations for 2022, p. 16-17.

3. Texas Legislative Efforts

a) Current Texas Law

The Texas Constitution requires that each public pension system “have a board of trustees to administer the system and to invest the funds of the system in such securities as the board may consider prudent investments.”¹¹⁸ The Constitution further requires that when making investment decisions each board “exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital.”¹¹⁹ Trustees and investment managers are further instructed to “discharge [their] duties *solely in the interest of the participants and beneficiaries* . . . for the exclusive purposes of . . . providing benefits to participants and their beneficiaries; and . . . defraying reasonable expenses of administering the system.”¹²⁰

The duty to invest “solely in the interests” of the members and beneficiaries incorporates trust law principles,¹²¹ which prohibit a fiduciary from prioritizing third-party interests over the financial interests of a trust’s beneficiaries. “The trustee, in other words, is under a duty to the beneficiary in administering the trust not to be guided by the interest of any third person. Acting with mixed motives triggers an irrebuttable presumption of wrongdoing, full stop.”¹²² Thus, in managing the investments of a trust, “the trustee’s decisions ordinarily must not be motivated by a purpose of advancing or expressing the trustee’s personal views concerning social or political issues or causes,” except as expressly authorized by the terms of the trust or consent of the beneficiaries, or in some charitable contexts.¹²³ This is because a fiduciary has an “obligation to maximize the trust income by prudent investment.”¹²⁴

¹¹⁸ Tex. Const. art. XVI, Sec. 67.

¹¹⁹ *Id.*

¹²⁰ Tex. Gov’t Code Sec. 802.203 (emphasis added).

¹²¹ *Cf.* 29 U.S.C. § 1104 (analogous sole-interest ERISA standard); *Varity Corp. v. Howe*, 516 U.S. 489, 497 (1996) (noting that “the law of trusts will often inform . . . an effort to interpret ERISA’s fiduciary duties,” though it may not always be determinative).

¹²² Max M. Schanzenbach & Robert H. Sitkoff, *Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee*, 72 *Stan. L. Rev.* 381, 400-401 (2020) (citations and quotations omitted).

¹²³ Restatement (Third) of Trusts, § 90, cmt. c; *see also* Uniform Prudent Investor Act § 5 cmt. (1994) (“No form of so-called ‘social investing’ is consistent with the duty of loyalty if the investment activity entails sacrificing the interests of trust beneficiaries—for example, by accepting below-market returns—in favor of the interests of the persons supposedly benefitted by pursuing the particular social cause.”); Richard A. Posner & John H. Langbein, *Social Investing and the Law of Trusts*, 79 *Mich. L. Rev.* 72, 96 (1980) (“It remains to consider whether social investing is contrary to trust law and its statutory counterparts. We conclude that it is . . .”).

¹²⁴ *Blankenship v. Boyle*, 329 F. Supp. 1089, 1096-98 (D.D.C. 1971) (holding that trustees breached their fiduciary duty to coal miner beneficiaries to maximize income by holding an inordinate proportion of the trust’s assets in cash in non-interest-bearing checking accounts to benefit a union-controlled bank rather than investing the funds, even in government bonds, to generate returns for the beneficiaries); *see also* *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 419-21 (2014) (holding that although they are not required to diversify, fiduciaries of ERISA-governed ESOP plan are not entitled to a generalized presumption of prudence; regardless of nonpecuniary goals, such as employee ownership of employer stock, ERISA’s reference to “benefits” refers to “*financial* benefits” (emphasis in original)); *Rippey v. Denver U.S. Nat. Bank*, 273 F. Supp. 718, 734 (D. Colo. 1967) (holding that trustee’s failure to seek the best price for stock in newspaper company, and decision instead to sell to permit non-beneficiary partial owner to maintain control, violated trustee’s duty to get the “best price obtainable” for trust beneficiaries).

Accordingly, Texas law may prohibit an investment manager from simultaneously pursuing ESG goals as well as financial considerations in managing Texas state pension funds. Doing so would promote the interests of third parties, instead of just those of the Texas state pension systems and its beneficiaries.¹²⁵

b) S.B. 1446

Last session, the Senate passed S.B. 1446 to block financial firms from using Texas pension funds for their narrow political agendas, requiring them instead to focus on maximizing financial returns for the Texans who are relying on these funds. The bill sought to ensure that the investment of public retirement system assets is based solely on financial factors and that such assets are not used to further social, political, or ideological interests.¹²⁶

The bill also provided for public notice with respect to how a proxy advisor will cast a vote on behalf of a public retirement system and provides for the reporting of certain public retirement system investment relationships and votes so that system members know how the shares of the pension systems are being used to make corporate decisions.¹²⁷

c) S.B. 1060

There are many insurance-specific cases of shareholder activists trying to impose a political agenda on an insurance company for purposes outside of their business objectives. In response, the Senate also passed S.B. 1060¹²⁸ which would prohibit an insurer or holding company organized under state law from including a political shareholder proposal in a proxy statement or implementing a political shareholder proposal.¹²⁹

One recent case is from a group called “As You Sow.” Their website describes the organization this way:

Our mission is to promote environmental and social corporate responsibility through shareholder advocacy, coalition building, and innovative legal strategies. Corporations are responsible for most of the pressing social and environmental problems we face today — we believe corporations must be a willing part of the solutions. We make that happen. As shareholder advocates, we directly engage corporate CEOs, senior management, and institutional investors to change corporations from the inside out.¹³⁰

¹²⁵ While ESG factors might lawfully be considered in determining whether a given investment strategy is the most profitable, they still likely cannot ultimately be permitted to prevail over financial considerations. *Cf. Withers v. Teachers’ Retirement System*, 447 F. Supp. 1248, 1256 (S.D.N.Y. 1978) (New York teachers’ pension fund invested in City bonds in part because City bankruptcy would have ultimately been detrimental to trust assets). In the same vein, Schanzenbach and Sitkoff distinguish between two types of ESG investing, inappropriate “collateral benefits ESG,” in which ESG factors are considered “for moral or ethical reasons or to benefit a third party,” and permissible “risk-return ESG,” in which ESG factors are considered “to improve risk-adjusted returns.” Schanzenbach & Sitkoff, *supra n.l.*, at 389-90.

¹²⁶ Tex. S.B. 1446, Original Author’s/ Sponsor’s Statement of Intent, 88th Leg., R.S. (2023).

¹²⁷ *Id.*

¹²⁸ S.B. 1060 also died on the House General State Calendar in the final days of the Legislative Session.

¹²⁹ Tex. S.B. 1060, Original Author’s/ Sponsor’s Statement of Intent, 88th Leg., R.S. (2023).

¹³⁰ About Us, As You Sow, <https://www.asyousow.org/about-us>.

The organization proposed resolutions to multiple insurers to require the insurers to track greenhouse gas emissions at the oil and gas companies they insure. These resolutions are not designed to help the insurance company provide better insurance, they are designed to achieve a political end that the proponents cannot achieve by political means.

These practices have real consequences. Energy is obviously a critical part of our state's economy, and these proposals, over time, are specifically targeted at making it more difficult for energy companies to get insurance and capital, two things any business needs to grow.

4. S.B. 13 Monitoring

a) Overview

Oil and natural gas represents nearly a third of Texas's GDP and funds more than 10 percent of the state's budget. The fossil fuel discrimination movement is denying capital to responsible, hard-working energy businesses, which means the energy Texas needs will be less affordable and less secure. In addition, investment and pension managers who invest based on political trends undermine their fiduciary duty and threaten our workers' and retirees' futures.¹³¹

S.B. 13 prohibits Texas state agencies that invest funds from investing in financial companies that boycott energy companies. Specifically, it requires the Comptroller of Public Accounts of the State of Texas to prepare and maintain a list of all financial companies that refuse to deal with, terminate business activities with, or otherwise take any action that is, solely or primarily, intended to penalize, inflict economic harm on, or limit commercial relations with a financial company because the company engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law.¹³²

This list is then provided to the state agencies that invest funds, who in turn send a letter to the listed companies informing them that they are subject to divestment if they do not stop boycotting energy companies within 90 days. If the company does not stop boycotting energy companies, the state agency is required to sell, redeem, divest, or withdraw all publicly traded securities of the company unless the holdings are indirect holdings managed by investment funds or private equity funds.¹³³

A state entity can cease divesting from one or more listed companies only if clear and convincing evidence shows that: (1) the state governmental entity has suffered or will suffer a loss in the hypothetical value of all assets under management by the state governmental entity as a result of having to divest from listed companies; or (2) an individual portfolio that uses a benchmark-aware strategy would be subject to an aggregate expected deviation from its benchmark as a result of having to divest from listed companies.¹³⁴

S.B. 13 further states that a governmental entity may not enter into a contract with a company for

¹³¹ Tex. S.B. 13, Original Author's/ Sponsor's Statement of Intent, 87th Leg., R.S. (2021).

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

goods or services unless the contract contains written verification from the company that it does not boycott energy companies and will not boycott energy companies during the term of the contract. This provision only applies to a company with 10 or more full time employee and that has a contract value of \$100,000 or more.¹³⁵

b) List Maintenance and Removal

The Texas Treasury Safekeeping Trust Company (Trust Company) was created by the Texas Legislature in 2001 as a special purpose entity to more efficiently and economically manage, invest, and safeguard funds for the state and various subdivisions.¹³⁶ The Texas Comptroller is the sole officer, director, and shareholder of the Trust Company, directed with its management. The Trust Company manages over \$166 billion in state assets over an assortment of funds and accounts.¹³⁷

The Trust Company prepares and maintains several divestment lists on behalf of the Comptroller including the S.B. 13 list of Financial Companies that Boycott Energy Companies.¹³⁸ To date, there are currently 16 companies on the list and 353 funds.¹³⁹ The list must be updated annually, but may be updated as frequently as quarterly.

S.B. 13 has two parts: a divestment list and a contracting requirement. The bill directs the Comptroller to prepare and maintain a list of financial companies that boycott energy companies.

“Boycott energy company” means, without an *ordinary business purpose*, refusing to deal with, terminate business activities with, or otherwise taking any action that is *intended to penalize, inflict economic harm on, or limit commercial relations with* a company because the company engages in the exploration, production, utilization, transportation, sale or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law or does business with such a company.¹⁴⁰

In addition, state agencies may not enter into a contract unless it includes language to ensure that providers of the goods or services are not boycotting and will not in the future boycott energy companies during the term of the contract.¹⁴¹

i. Public Companies

In order for a company to get onto the list, they must meet pre-verification requirements. Companies meeting all three of these initial items remain eligible for the list (data filtered to

¹³⁵ *Id.*

¹³⁶ Tex. Gov’t Code Sec. 404.

¹³⁷ *Written testimony of the Texas Treasury Safekeeping Trust Company for Responsible Investing Charge: Hearing Before the S. Comm. on State Affairs*, 2024 Leg., 88th Interim (Oct. 17, 2024).

¹³⁸ In addition, the Trust Company also prepares and maintains the following lists: companies that boycott Israel; Designated Foreign Terrorist Organizations; Scrutinized Companies with Ties to Foreign Terrorist Organizations; Companies engaged in scrutinized business operations in Iran; and companies engaged in scrutinized business operations in Sudan.

¹³⁹ *Financial Companies that Boycott Energy Companies*, Texas Comptroller of Public Accounts (Aug. 2024), <https://comptroller.texas.gov/purchasing/publications/divestment.php/>

¹⁴⁰ *Written testimony of the Texas Treasury Safekeeping Trust Company* (Oct. 17, 2024), (emphasis added).

¹⁴¹ *Id.*

identify publicly traded financial services companies (e.g., asset managers) and banks based on following criteria):

- Global Industrial Classification System (GICS) and Bloomberg Industrial Classification System (BICS);
- Signatory to both Climate Action 100 and Net Zero Banking Alliance/Net Zero Asset Managers Initiative; and
- MSCI ESG Ratings Service.¹⁴²

If a company meets these threshold requirements, full verification is needed. The Trust Company will then request answers to additional questions regarding the public pledges or commitments, such that companies meeting any of the following criteria will then be placed on the list:

- Policies regarding oil and gas financing (specific policies vary by company);
- At least 10 publicly-offered funds that prohibit, restrict, or limit investment in energy companies;
- Proxy voting; or
- Aggressive net zero goals.¹⁴³

It should also be noted that per statute, a failure to respond to the Comptroller's letter requesting verification creates a presumption of boycotting.¹⁴⁴ Should a company wish to be removed from the list, the Trust Company has stated that they are always available to meet to discuss whether any of the above actions have changed and warrant removal.¹⁴⁵

ii. Funds

The 353 Mutual Funds and Exchange Traded Funds who are on the list, many of which are self reported, also are provided verification. Verification is mailed to approximately 160 investment managers who offer mutual funds and exchange traded funds to investors in the U.S. who are purported to incorporate a relevant ESG strategy. The letter asks managers to submit a list of funds which may prohibit or limit investment in energy companies.¹⁴⁶

Funds are removed from the list when they provide the Comptroller with information that the fund no longer prohibits restricts, or limits investment in fossil-fuel based companies or has been dissolved.¹⁴⁷

B. Interim Hearing

On October 17, 2024, the Senate Committee on State Affairs held an interim hearing covering the responsible investing charge provided by the Lieutenant Governor. Invited testimony included the Foundation for Government Accountability, Consumers' Research, Employees Retirement System of Texas, Teacher Retirement System of Texas, Institutional Shareholder Services, The University

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

of Texas/Texas A&M Investment Management Company, Texas Permanent School Fund Corporation, and the Texas Treasury Safekeeping Trust Company.

1. Foundation for Government Accountability

Eric Bledsoe, senior fellow of the Foundation for Government Accountability, described environmental, social, and governance (ESG) investment as a losing investment strategy. He told the committee proxy advisory firms are currently a duopoly and that shares owned by public entities are being used to vote against the financial interests of Texans. He also stated that he has witnessed ESG firms leverage the financial assets they manage as a strategy to extract concessions from the boards of other companies, said that hedge fund managers are commonly responsible for violations of fiduciary responsibility.

He recommended that Texas continue to keep politics out of pensions and said that the legislature should review S.B. 1446, 88th Legislature, Regular Session, 2023, as a model for future legislation to manage public retirement systems.

2. Consumers' Research

Will Hild, executive director of Consumers' Research, contested a prominent study that concluded S.B. 13, 87th Legislature, Regular Session, 2021, increased the rates that Texas municipalities pay on municipal bonds. Hild also said that a lack of competition among proxy advisory firms has led to inefficiencies and a decline in the quality of the services they provide. He said that two proxy advisory companies in particular have significant foreign investments. Hild also discussed the list of asset managers who have divested from fossil fuels that is kept by the Comptroller of Public Accounts of the State of Texas.

3. Employees Retirement System of Texas

Porter Wilson, executive director of the Employees Retirement System of Texas (ERS), discussed the internal governance structure of the ERS trust fund and the ways ERS protects the economic soundness of the trust. He said that ERS has continued to make investments that ensure financial stability and growth.

David Veal, chief investment officer for ERS, explained that ERS takes actions guided by its fiduciary duties only. He also discussed how contracts ensure that fiduciary duty standards are clearly defined and how they hold managers responsible for upholding those standards.

4. Teacher Retirement System of Texas

Brian Guthrie, executive director of the Teacher Retirement System of Texas (TRS), said that returns on the TRS trust fund have increased by over 12 percent in 2024 and that the fund is now worth \$210 billion. He said that TRS uses proxy advising to vote on the boards of firms and leverages its influence to ensure the proxy advisers it contracts with vote in accordance with their fiduciary duty. He told the committee that TRS has felt no impact from S.B. 13.

Guthrie confirmed to the committee that TRS works with PIMCO Investment Management and uses Institutional Shareholder Services (ISS) as a proxy advisory service, elaborating that ISS uses benchmark policies when it votes on TRS investment decisions.

5. Institutional Shareholder Services

Steven Friedman, general counsel for Institutional Shareholder Services (ISS), said that ISS serves in an advisory capacity to help clients to vote on investments in accordance with their fiduciary duties. ISS provides investment research and complies with each of its customer's proxy voting guidelines. Friedman said that no default policy for proxy voting exists and that clients must declare which policies they want ISS to follow or direct ISS to submit its own. He told the committee that ISS has a legal responsibility to treat its clients as fiduciaries and there are increased cost associated to custom proxy voting, which is tied to an objective labor standard and is not punitive.

6. The University of Texas/Texas A&M Investment Management Company

Richard Hall, President of The University of Texas/Texas A&M Investment Management Company (UTIMCO), discussed the company's compliance with proxy voting standards and its focus on generating positive financial returns. UTIMCO follows a board-aligned proxy voting protocol that requires its board to understand which policies will generate the highest financial returns. Hall said that UTIMCO's cooperation with AQR Funds is currently negligible, that it does not work with Northern Funds, and that its work with PIMCO is limited to nonvoting debt holding. UTIMCO is currently transitioning from proxy voting to an internally managed voting model in order to comply with S.B. 13, but the bill has not affected them from a returns perspective. Specifically, Hall said that UTIMCO has historically been over 95 percent externally managed but that it is in the process of enforcing its own investment guidelines and pulling back proxy voting authority. He said the law has had clear benefits, but suggested that legislation that is too prescriptive often leads to adverse outcomes.

7. Texas Permanent School Fund Corporation

Robert Borden, Chief Executive Officer and Chief Investment Officer for the Texas Permanent School Fund Corporation (TPSF), discussed the mission of the Permanent School Fund to generate superior risk-adjusted returns for the benefit of Texas' schools. He said TPSF's proxy voting strategy achieves better results than a board-aligned voting proxy strategy because it actively votes against management that fails to generate positive financial returns. Borden said that TPSF has achieved almost complete control of its proxy voting at this time, and it does not engage with AQR Fund, Northern Funds, or PIMCO.

Borden explained certain changes to TPSF's financial returns voting policy since the passage of S.B. 13, such as new board voting directives discourage passive responses to activist shareholder initiative and encourage focused, decisive attention to the goal of generating positive investment returns.

8. Texas Treasury Safekeeping Trust Company

Mike Reissig, Chief Executive Officer of the Texas Treasury Safekeeping Trust Company (TSTC), discussed the comptroller's list of companies that boycott investment in the fossil fuel industry and explained how TSTC determines which companies are included on that list. Reissig said that no company on the fossil fuel divestment list has been removed. He said that TSTC has willingly adapted to legislative directions and will continue to do so.

C. Recommendations

Texas has led the nation in pushing back against Wall Street firms that use other people's money to impose a political agenda. Some firms have made changes in response to Texas holding them accountable, but there is still more work to be done.

1. Asset Managers and Advisors

The Texas Senate should pass legislation again requiring that all asset managers and advisors use only a fiduciary standard in investing public retiree money, so that maximizing returns for all is the universal standard.¹⁴⁸ The public advisors and managers should consider only financial factors in deciding how to invest assets and how to vote shares, not factors that stem from commitments to other politically motivated groups. Where a public pension system hires managers or advisors who invest money by a standard other than the maximization of return, the state has an interest in creating accountability for pension board members to the retirees.

2. Proxy Advisory Firms and Voting Policies

On proxy advisory firms, other options exist. Proxy advisory firms (or any other firms providing voting advice) should be required to demonstrate annually that their vote recommendations are in the best economic interest of shareholders, other than (1) with respect to company-sponsored proposals, such as the election of directors and the appointment of the independent auditor, or (2) where the proxy advisory firm recommended a vote consistent with the recommendation of a board of directors composed of a majority of independent directors.

Before adopting changes to their proxy voting policies, proxy advisory firms should be required to disclose the reasons for the proposed changes, including an analysis of how the proposed changes will enhance shareholder value, and provide a reasonable period during which all relevant constituencies could comment on the proposed changes. The final voting policies should only be issued following a reasonable time during which the proxy advisory firms must carefully consider the views expressed during the comment period. Comment letters should be required to be made publicly available on the websites of the proxy advisory firms.

3. S.B. 13 List

The Committee recommends that if a company comes into compliance with state law, there should be a clear path to removal from the list.

¹⁴⁸ S.B. 312 has already been filed by Senator Hughes for the 89th Legislative Session.

CHARGE NO. 5

Banning Delta 8 and 9: *Examine the sale of intoxicating hemp products in Texas. Make recommendations to further regulate the sale of these products, and suggest legislation to stop retailers who market these products to children.*

A. Background

In 2018, Congress passed H.R. 2, also known as the 2018 Farm Bill or the Agriculture Improvement Act of 2018. The bill legalized the farming and industrial production of industrial hemp nationwide, while also removing hemp from the Controlled Substances Act.¹⁴⁹ The legislation delegated to the states the power to regulate hemp products within their borders.¹⁵⁰

Under the Farm Bill, hemp is differentiated from marijuana only by the amount of THC (tetrahydrocannabinol) in the plant. THC is the chemical component that induces an intoxicating, psychoactive, or “high” effect. Both hemp and marijuana are both cannabis plants, however, “hemp” cannot contain more than 0.3 percent Delta 9 THC by dry weight.¹⁵¹ Federal law did not differentiate hemp from other cannabis plants, which were effectively illegal in 1937 under the Marihuana Tax Act and then formally deemed illegal in 1970 under the Controlled Substances Act.¹⁵²

Following the 2018 Farm Bill, hemp is now an agricultural crop regulated by the U.S. Department of Agriculture (USDA).¹⁵³ However, the bill explicitly preserved the authority of the U.S. Food and Drug Administration (FDA) related to hemp-based products such as CBD and other hemp-derived cannabinoids that may be used as an ingredient in food and some consumer products.¹⁵⁴ Immediately after enactment, the FDA stated that it is “unlawful” under the Federal Food, Drug, and Cosmetic Act (FFDCA) to introduce food containing added cannabinoids into interstate commerce, or to market such products as, or in, dietary supplements, “regardless of whether the substances are hemp-derived.”¹⁵⁵ Although the FDA has continued to maintain that it is unlawful to add hemp-derived cannabinoids to food or to market cannabinoids including CBD as an ingredient in food and beverages or as a dietary supplement, consumer products containing these compounds continue to be marketed in violation of the FDA’s determination.¹⁵⁶

In 2019, the Texas Legislature responded to the federal Farm Bill by enacting H.B. 1325, also known as the Texas Hemp Bill.¹⁵⁷ H.B. 1325 authorizes the production, manufacture, retail sale, and inspection of industrial hemp crops and products, including products for consumable hemp

¹⁴⁹ Agricultural Improvement Act of 2018, H.R. 2, 115th Congress (2018).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Hudak, John, The Farm Bill, hemp legalization and the status of CBD: An explainer, The Brookings Institution (Dec. 14, 2018), <https://www.brookings.edu/articles/the-farm-bill-hemp-and-cbd-explainer/>.

¹⁵³ 7 U.S.C. §1639(o)-(r); 7 C.F.R. §990.

¹⁵⁴ *FDA’s Oversight of Hemp-Derived Compounds*, Congressional Research Service (Aug. 18, 2023), <https://sgp.fas.org/crs/misc/IF12477.pdf>.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ Tex. H.B. 1325, 86th Leg., R.S. (2019).

products which contain cannabidiol (CBD), as well as other edible parts of the hemp plant. The legislative intent for the passage of the bill was to provide farmers with another “viable agricultural crop and an agricultural commodity,” and that “Texas farmers would stand to benefit from a state-regulated hemp industry.”¹⁵⁸

The bill maintained that marijuana and tetrahydrocannabinol (THC), minus the limited THC in hemp, were illegal substances. Similar to the federal legislation, hemp was excluded from the definition of “controlled substance” and “marijuana.” Hemp is defined as “the plant *Cannabis sativa* L. and any part of that plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.”¹⁵⁹ Marijuana remains illegal for recreational use in Texas with possession of up to two ounces classified as a Class B misdemeanor, punishable by up to 180 days in jail and/or a fine up to \$2,000.¹⁶⁰

B. Discussion

1. Legal Loophole

A legal loophole emerged when the federal Farm Bill legalized hemp or cannabis with less than 0.3 percent Delta 9 THC. Cannabis with more than 0.3 percent Delta 9 THC, meanwhile, is considered marijuana and remains federally illegal. This is the only distinction made between what is “legal” and “illegal.” Beyond this definition, there is substantively no difference between hemp and marijuana.

The market for hemp rope, fabric and other non-ingestible products was slow to develop.¹⁶¹ Even sales of CBD products were stymied by lack of federal regulations, leading many national retailers to steer clear of those products.¹⁶² Intoxicating hemp derivatives such as Delta 8 THC and Delta 10 THC became popular.¹⁶³ The hemp product industry also found it was possible to get enough Delta 9 THC into a beverage or edible to have psychoactive effects.¹⁶⁴ Delta 8 products are usually derived from CBD and are made through the use of harmful chemicals, while Delta 9 products are made through the naturally occurring compound in the plant.

As a result of the abuse of legislative intent of federal and state law, these psychoactive products are currently on the market in Texas. Because these products originate from “hemp” and not “marijuana” they fall into a legal loophole that was unintended and has since been exploited.

¹⁵⁸ Tex. H.B. 1325, Original Author’s/ Sponsor’s Statement of Intent, 86th Leg., R.S. (2019).

¹⁵⁹ *Id.*

¹⁶⁰ Texas Health and Safety Code Sec. 481.121.

¹⁶¹ Fertig, Natalie, *Hemp and marijuana go to war*, Politico (May 21, 2024),

<https://www.politico.com/news/2024/05/21/hemp-marijuana-farm-bill-00159040#:~:text=The%20loophole%20originated%20in%202018,marijuana%20and%20remains%20federally%20illegal.>

¹⁶² *Id.*

¹⁶³ Note: this is not an exhaustive list of derivatives currently on the market.

¹⁶⁴ *Id.*

2. Questionable Testing of Products

Retailers of hemp derived products must ensure the product is safe for consumption by being free of heavy metals, pesticides, harmful microorganisms, and residual solvents.¹⁶⁵ Additionally, the products sold must not contain more the prescribed 0.3 percent of Delta 9 THC.¹⁶⁶ Products that are being manufactured or handled in a manner that creates a health hazard for people who may use them can be detained.¹⁶⁷

There have been numerous documented instances of products across the state that allege to be within the legal limits of THC that have instead contained potent levels of the psychoactive compound.¹⁶⁸ The lack of surety of a hemp derived product's THC levels makes these products potentially dangerous for Texans who do not know for sure what is in a product that they are ingesting.

3. Lack of Age Restrictions

There are currently no required age verification on these intoxicating hemp products. There are also no current restrictions on how close these products can be sold to a school, with shops and even vending machines selling products next to or in close vicinity to schools, such as Lively Middle School and Travis Heights Elementary School in Austin. Some products on the market have been reported to be targeting children through their marketing and packaging to look like and taste like candy or other enticing snacks.

Numerous reports across the state have shown that children are getting their hands on these products and becoming seriously ill and hospitalized. According to the Texas Department of State Health Services (DSHS), children make up the largest demographic of cannabinoid poison center calls in Texas.¹⁶⁹ Children or adolescents also experience serious effects from exposure such as negative neurologic and respiratory functioning and are at a heightened risk of psychosis, cannabinoid hyperemesis syndrome, and dependency.¹⁷⁰

4. Negative Health Effects

There are years of documented reports on the health and safety risks associated with intoxicating hemp products. The U.S. Centers for Disease Control and Prevention has warned of the dangers of the use of cannabis products such as the risk of cannabis use disorder, negative effects on brain health and function, heart health implications, impaired driving, lung health implications if smoked, and the links of THC use to social anxiety, depression, and schizophrenia.¹⁷¹ The FDA

¹⁶⁵ *What are the requirements to sell CHPs in retail?*, Texas Department of State Health Services, <https://www.dshs.texas.gov/consumable-hemp-program/consumable-hemp-products-frequently-asked-questions>.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ Gold, Russell, *Texas Has Basically Legalized Marijuana. We Have the Proof.* (Aug. 2024), <https://www.texasmonthly.com/news-politics/texas-legalized-marijuana-thc-delta-9/>.

¹⁶⁹ Cannabinoid-Related Poison Center Calls, Texas Health Data, Texas Department of State Health Services, <https://healthdata.dshs.texas.gov/dashboard/drugs-and-alcohol/Cannabinoid-related-poison-center-calls>.

¹⁷⁰ *Written testimony of Dr. Robert Emmick Jr. for Banning Delta 8 and 9 Charge: Hearing Before the S. Comm. on State Affairs*, 2024 Leg., 88th Interim (May 29, 2024).

¹⁷¹ *Cannabis Health Effects*, U.S. Centers for Disease Control and Prevention (Feb. 16, 2024), <https://www.cdc.gov/cannabis/health-effects/index.html>.

has even warned the public and published reports on the “serious health risks” associated with Delta 8 THC products and other derivatives.¹⁷²

5. Undermining the Compassionate Use Program

The Compassionate Use Program (CUP) was enacted by the Legislature in 2015 to allow registered physicians to prescribe and licensed dispensaries to provide medical marijuana.¹⁷³ The current list of covered conditions are:

- epilepsy;
- a seizure disorder;
- multiple sclerosis;
- spasticity;
- amyotrophic lateral sclerosis;
- autism;
- cancer;
- post-traumatic stress disorder; and
- an incurable neurodegenerative disease.¹⁷⁴

There are currently three licensed medical marijuana dispensaries in Texas that operate under CUP. The CUP is a highly regulated industry overseen by the Texas Department of Public Safety, ensuring that patients receive medical grade products and dosages. There are thousands of licensed hemp dispensaries around the state that are selling products that are reported to be undermining the state sanctioned medical program and making the program uneconomical for the operators.¹⁷⁵

C. Interim Hearing

On May 29th, 2024, the Senate Committee on State Affairs held an interim hearing covering the charge of banning Delta 8 and 9. Invited testimony included representatives from the Department of State Health Services, the Texas Medical Association, the Texas Pediatric Society, the Texas Public Health Coalition, the Texas Department of Public Safety, The Houston Forensic Science Center, the Texas Association of Crime Lab Directors and Texas Original Compassionate Cultivation.

1. Department of State Health Services

Timothy Stevenson, associate commissioner for consumer protection for the Department of State Health Services (DSHS), said that the federal 2018 Farm Bill and the Texas Farm Bill of 2019 authorized the commercial production of hemp and made legal distinctions that exclude low-level tetrahydrocannabinol (THC) products from marijuana classification. He said that current law prohibits Delta 9, a compound found in hemp plants, from exceeding 0.3 percent THC by dry

¹⁷² *5 Things to Know about Delta-8 Tetrahydrocannabinol – Delta-8 THC*, U.S. Food and Drug Administration (May 4, 2022), <https://www.fda.gov/consumers/consumer-updates/5-things-know-about-delta-8-tetrahydrocannabinol-delta-8-thc>.

¹⁷³ Tex. S.B. 339, 84th Leg., R.S. (2015).

¹⁷⁴ Texas Occupations Code Sec. 169.003.

¹⁷⁵ Testimony of Nico Richardson for Banning Delta 8 and 9 Charge: Hearing Before the S. Comm. on State Affairs, 2024 Leg., 88th Interim (May 29, 2024).

weight volume but does not explicitly list or limit Delta 8 and other THC derivatives that have proliferated in recent years. He described lawsuits and an active injunction preventing DSHS from enforcing restrictions on non-Delta 9 THC products. He said that DSHS, despite the lawsuits, still maintains that Delta 8 and other THC derivatives are controlled substances.

Stevenson stated that DSHS launched its consumable hemp program in 2020. He said that DSHS relies primarily on testing by manufacturers and on Department of Agriculture field testing because THC testing costs are high. He discussed the number of THC manufacturers and retailers in Texas. He said that DSHS's THC testing program is on track to employ 12 people across the state in 2024. He said that DSHS, given its staff numbers, has the ability to inspect all current manufacturers every five years.

He said that Delta 8 and 9 have slightly different chemical structures. Stevenson elaborated that cannabidiol, or CBD, can easily be converted to Delta 8 and 9. Discussing DSHS's pending court case, he said that the case was brought because statute does not explicitly address THCs other than Delta 9, and that Delta 9 product testing indicates that they largely comply with statutory regulations.

Stevenson discussed DSHS enforcement mechanisms for cannabis product violations, and testified that there were 9,344 cannabis-related poison control center calls relating to people under 19 in Texas between 2019 and 2024.

2. Texas Medical Association, Texas Pediatric Society & Texas Public Health Coalition

Dr. Robert Emmick Jr., who acted as a representative for the Texas Medical Association, the Texas Pediatric Society, and the Texas Public Health Coalition, and who also works as an Austin emergency department pediatrician, discussed his experience with patients experiencing THC-related medical issues. He said Texas has seen an increase in THC-related poison control center calls, many related to accidental ingestion of THC by children. He said that the 0.3 percent THC concentration limit, initially set in the 1970s, is not based on clinical guidance on safety of consumption and that the standard needs examination. He discussed medical issues associated with THC use. He recommended that the legislature give DSHS jurisdiction over all consumable hemp products, close loopholes in current law, establish safety monitoring strategies and research to detect health outcomes of THC use, ensure that all products are labeled and packaged appropriately, and invest in a robust testing system.

Emmick said that the arbitrary 0.3 percent THC concentration threshold was federally determined and that he has not seen research showing that the standard is safe or unsafe. He continued, discussing the value of cannabis as a pain medication and overdoses caused by cannabinoid products. Emmick said that he has seen more pediatric cannabinoid overdoses than pediatric alcohol overdoses but that pediatric prescription pill overdoses are most common, in his experience. He also discussed the consequences of cannabis use as opposed to opioid use, largely describing the specific dangers of cannabis use by children and stating that pediatric patients make up five to 10 percent of THC-related cases in emergency departments.

He discussed the frequency and consequences of accidental pediatric THC ingestions and said that unlike in the cases of ingestions of opioids or other substances, doctors have no ways to treat

pediatric patients who have ingested THC. Emmick explained that there is packaging of cannabinoid products that is specifically marketed to children. He recommended requiring childproof containers, prohibiting marketing to children, and implementing a 21-year age requirement for recreational cannabis use because cannabis products affect children's brains differently than adults' brains.

He continued, describing the increased risks of paranoid psychosis, increased rates of seizures and seizure-related injuries, and medical issues related to lack of airway control as a result of cannabis use. Emmick said that the Texas Medical Association supports the Compassionate Use Program (CUP) and advocates for more research studying impacts of THC use, and that current research data used to determine the impacts of THC use are not adequate.

3. Texas Department of Public Safety

Mark Melson, major for the Texas Department of Public Safety, said that DPS faces challenges related to the lack of clarity in statute regarding baked goods, vapes, gummies, oils, and smokable products made with cannabis derivatives. He said there are currently no roadside presumptive field tests available that distinguish between illegal marijuana, legal hemp, or Delta 8. He said that neither officers nor drug-sniffing canines are able to distinguish upon sight or smell between illegal and legal cannabis products. Melson affirmed that cannabis violations are in effect almost impossible to prosecute, and said that DPS needs clearer definitions to establish which products are legal under the CUP.

Brady Mills, chief of the crime laboratory division for the Texas Department of Public Safety, discussed the legal impediments related to cannabis testing encountered by DPS's crime laboratory division. He said that the impacts of legal impediments fall heaviest on the seized drug section but that the toxicology testing program is affected as well. He said that 40 percent of drug toxicology cases today test positive for THC and that the changes to the statutory definition of marijuana in Texas have challenged the DPS crime laboratory division's ability to support Texas courts. He said that state courts have interpreted Texas cannabis law inconsistently, creating uncertainty regarding testing requirements and making resource allocation difficult. He said that statutory changes have made testing processes more arduous as well. In relation to hemp retailers' proximity to children, Mills said no regulations existed.

4. The Houston Forensic Science Center & Texas Association of Crime Lab Directors

Peter Stout, president of the Texas Association of Crime Lab Directors, said, in describing his role as head and president of the Houston Forensic Science Center, that cannabis testing has become more time-consuming and expensive due to the federal and state hemp laws. He said that the lack of clear definitions for compounds other than Delta 9 causes problems for his lab. He said that the increased costs and complexities of marijuana testing caused by recent legislation have led to long backlogs for pill and sexual assault kit testing at his lab. He detailed that the increased demand for laboratory testing of cannabis has resulted in a four-month testing backlog as well.

5. Texas Original Compassionate Cultivation

Nico Richardson said Texas Original Compassionate Cultivation is the largest operator within the CUP. Richardson, who is Texas Original Compassionate Cultivation's chief executive officer, said that many consumable hemp products, such as Delta 9, are far more potent than products offered by the CUP and stressed that they are dangerously unregulated. He described the hemp industry and the current prevalence of unregulated cannabinoids. Richardson said that CUP patients and doctors are leaving the CUP and turning to the hemp industry. He said that the CUP is heavily regulated compared to the hemp industry, is less accessible, is unable to compete with hemp industry prices, and is unable to provide product formats preferred by many patients. He said that the CUP is unlikely to survive in coming years because it is not economical for operators. He discussed the ability of minors to buy hemp products. He said that the only difference between medical marijuana and consumable hemp in Texas is that the former is heavily regulated.

Richardson informed the Committee that CUP retailers are required to be located at least 1,000 feet from school grounds. In discussing whether regulatory changes might encourage medical cannabis patients to remain with the CUP instead of turning to the hemp industry, he said that decreased regulation and increased CUP accessibility could encourage people to remain.

D. Recommendations

As a result of this loophole, retailers in Texas are openly selling intoxicating marijuana. The Legislature should close the legal loophole and ban intoxicating hemp products in the state. The Legislature should also ensure that children are protected from exposure and that the state sanctioned medical marijuana program is not undercut.

CHARGE NO. 6

Impeachment Reform: *Evaluate the constitutional and statutory impeachment procedures in our state. Make recommendations to ensure a fair and transparent process.*

A. Background

1. Federal Impeachment Process

The U.S. Constitution gives Congress the power to impeach federal officials.¹⁷⁶ The Constitution provides that the House of Representatives "shall have the sole Power of Impeachment"¹⁷⁷ and "the Senate shall have the sole Power to try all Impeachments ... [but] no person shall be convicted without the Concurrence of two-thirds of the Members present"¹⁷⁸. The president, vice president, and all civil officers of the United States are subject to impeachment.

The impeachment practice originated in England and was later used by many of the American colonial and state governments.¹⁷⁹ As adopted by the framers of the Constitution, this congressional power is a fundamental component of the system of "checks and balances."¹⁸⁰ Through the impeachment process, Congress charges and then tries an official of the federal government for "Treason, Bribery, or other high Crimes and Misdemeanors."¹⁸¹ The definition of "high Crimes and Misdemeanors" was not specified in the Constitution and has long been the subject of debate.¹⁸²

Under the proceedings, the House charges an official by approving by simple majority vote articles of impeachment. After the House sends its articles of impeachment to the Senate, the Senate then sits as a High Court of Impeachment to consider evidence, hear witnesses, and vote to acquit or convict the impeached official. A committee of representatives, called "managers," act as prosecutors before the Senate. In the case of presidential impeachment trials, the chief justice of the United States presides.¹⁸³

The Constitution requires a two-thirds vote of the Senate to convict, and the penalty for an impeached official upon conviction is removal from office. In some cases, the Senate has also disqualified such officials from holding public offices in the future. There is no appeal. Since 1789, about half of Senate impeachment trials have resulted in conviction and removal from office.¹⁸⁴

2. Texas Impeachment Process

The process of impeachment in Texas is modeled after the federal system and proceedings of impeachment. Article XV of the Texas Constitution controls the process. Under Article XV,

¹⁷⁶ U.S. Const. art. II, sec. 4.

¹⁷⁷ U.S. Const. art. I, sec. 2.

¹⁷⁸ U.S. Const. art. I, sec. 3.

¹⁷⁹ About Impeachment, United States Senate, <https://www.senate.gov/about/powers-procedures/impeachment.htm>.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

Sections 1 and 2 of the Texas Constitution, the House of Representatives is vested with the power of impeachment and the Senate has the duty to conduct the trial. The Senate, sitting as a Court of Impeachment, can only convict and ultimately remove a specified officer¹⁸⁵ with a two-thirds concurrence of Senators present.¹⁸⁶ The results of the impeachment extend only to removal from office and disqualification from any future “office of honor, trust or profit” in the state.¹⁸⁷

B. Discussion

1. Concerns with Current Process

Last year, the impeachment trial of Attorney General Ken Paxton highlighted some procedural and due process concerns.

Lieutenant Governor Patrick, in his statement at the end of the Senate impeachment trial of the Attorney General, raised the concern of the absence of a record of the House impeachment proceedings and the lack of reasonable time for the House to make their decision and vote to send the Articles of Impeachment to the Senate. In addition, unlike the federal impeachment process, Texas places its officials on unpaid leave.

Testimony given in the impeachment investigation was not given under oath and the target of the impeachment was unable to be present during the investigation with a lawyer to cross-examine the witnesses. The last House impeachment of a statewide official in 1917 against Governor Ferguson was conducted similar to a full trial before the House took a vote on the Articles of Impeachment. Witnesses were placed under oath and cross-examined by the defendant. Without these protections, there is little accountability, such as threat of perjury, for statements made.

2. Prior Term Doctrine Clarification

Another possible reform to the impeachment process involves the “prior term doctrine.”¹⁸⁸ Commonly referred to as the “forgiveness doctrine,” the doctrine provides that officials may not be subject to impeachment for any misconduct in which they had engaged in some prior office.

One issue with the doctrine is that it impedes impeachment of officials who commit misconduct and it does not come to light until after the official took a new office. The public, and the appointing authority will not have had the chance to weigh in on the matter in a timely manner.

C. Interim Hearing

On October 15, 2024, the Senate Committee on State Affairs held an interim hearing covering the impeachment reform charge. Invited testimony consisted of Jurisprudence professor Michael Gerhardt.

Michael Gerhardt, Professor of Jurisprudence at the University of North Carolina, opened his testimony before the committee by outlining that the impeachment process is, by design, difficult

¹⁸⁵ T.X. Const. art. XV, Sec. 2 lays out the list of certain officers who can be impeached by the Senate: the Governor, Lieutenant Governor, Attorney General, Commissioner of the General Land Office, Comptroller and the Judges of the Supreme Court, Court of Appeals and District Court.

¹⁸⁶ T.X. Const. art. XV, Sec. 3.

¹⁸⁷ T.X. Const. art. XV, Sec. 4.

¹⁸⁸ Tex. Gov. Code 665. See also *In Matter of Carillo*, 542 S.W. 2d 105 (Texas 1976).

and near-impossible to complete, largely due in part to the requirement that two thirds of the senate must be in agreement. He continued, describing impeachment as a last resort mechanism of the democratic process.

Gerhardt discussed some considerations related to Texas' processes for impeachment reform, first suggesting that there should be one place for all impeachment relevant materials to be found that is accessible to both government officials and the public. He continued by suggesting clarification for the process, such as what a "conflict of interest" is, and what happens to individuals who have committed misconduct that comes to light posthumously. Finally, he suggested that a constitutional amendment for increased government transparency may not be necessary.

D. Recommendations

The Fourteenth Amendment's Due Process Clause and Texas' analogous provision protects citizens not only from deprivations of protected life, liberty, and property interests, but also from deprivations of their "privileges or immunities" and from being "disenfranchised" in any way. The seriousness of the impeachment process in Texas should require additional procedural and due process safeguards.

Members of the House of Representatives should be provided a reasonable amount of time to review and consider any report or materials relating to an impeachment prior to a debate and vote on the House floor.

While pursuing the process of impeachment, it is recommended that testimony be sworn from witnesses who have direct knowledge of the alleged impeachable offenses and the target be allowed to have an attorney present to cross-examine the witnesses.

The Legislature should consider whether officials who face the impeachment process should be placed on unpaid leave.

Finally, it would aid any future impeachment process to ensure that the "prior term doctrine" is clarified.

CHARGE NO. 7

Runoff Elections: *Study the prerequisites, timing, and efficiency of runoff elections. Make recommendations to increase the efficiency and lower the costs of runoff elections. Examine the 50% vote threshold to avoid a runoff, particularly when four or more candidates are running for the same office. Report whether the vote percentage threshold should be lowered in some instances.*

A. Background

A primary candidate in Texas must receive a majority of the total votes cast (50 percent + 1 vote) to win the party's nomination.¹⁸⁹ If no candidate receives this amount, then a runoff primary election is held to determine the nomination.¹⁹⁰ The general primary election is held the first Tuesday in March while the runoff, if necessary, is held the fourth Tuesday in May.¹⁹¹

Texas is not an outlier in holding runoff elections to determine a party nominee. Indeed, six other states – Alabama, Arkansas, Georgia, Mississippi, Oklahoma, and South Carolina – join Texas in this practice.¹⁹² South Dakota and North Carolina operate similarly with notable exceptions. In North Carolina, a runoff is not automatic; the runoff can be requested if the first-place candidate receives less than 30% of the votes cast.¹⁹³ In South Dakota, a runoff is automatic on if no candidate wins more than 35% of the votes cast in a race with three or more candidates.¹⁹⁴

In Texas, from the 2018 through the 2024 election cycles, 22% (or 78 total) of the 353 contested primaries resulted in runoffs.¹⁹⁵ Of those 78 runoffs, the candidate who finished second in the original primary won 54% (or 42) of the runoffs.¹⁹⁶ In other words, 54% of the “winners” flipped between the general primary and the runoffs.

Of the seven states that hold primary runoffs, Texas' 54% flip rate is the highest and Mississippi is the lowest at 17%.¹⁹⁷ The other five states have flip rates between Alabama at 33% and Arkansas at 46%.¹⁹⁸

Voter turnout in runoffs is less than the primaries. Over the 2018 to 2024 election cycles, there were 42% fewer votes cast in a runoff versus the primary.¹⁹⁹ Texas falls in the middle of the runoff states in primary turnout drop-off. Georgia is the highest at 52% and Mississippi is the lowest at 18%.²⁰⁰

¹⁸⁹ Tex. Elec. Code Ann. § 172.003.

¹⁹⁰ Tex. Elec. Code Ann. § 172.004.

¹⁹¹ Tex. Elec. Code Ann. § 41.007.

¹⁹² Testimony of Geoff Pallay for Runoff Elections Charge: Hearing Before the S. Comm. on State Affairs, 2024 Leg., 88th Interim (Oct. 16, 2024).

¹⁹³ N.C. Gen. Stat. Ann. § 163-111.

¹⁹⁴ S.D. Codified Laws § 12-6-51.1.

¹⁹⁵ Testimony of Geoff Pallay for Runoff Elections Charge (Oct. 16, 2024).

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

Finally, Texas is an outlier in the length of time between the primary and the runoff. Texas has roughly 95 days between these elections depending on the calendar in the primary year.²⁰¹ All other states are shorter with South Carolina being the shortest at a mere 14 days.²⁰² Oklahoma is the closest to Texas with an average of 61 days between the primary and runoff with Georgia third at 46 days.²⁰³ The other states range from 35 days to 21 days on average.²⁰⁴

B. Interim Hearing

On October 16, 2024, the Senate Committee on State Affairs held an interim hearing covering the runoff election charge provided by the Lieutenant Governor. Invited testimony consisted of Geoff Pallay from Ballotpedia.

Geoff Pallay, editor in chief of Ballotpedia, discussed runoff elections nationally between 2018 and 2024. He said that Texas is one of seven states to use a 50 percent threshold for runoffs in primary elections, meaning that in a race where no candidate receives a majority of the vote, the two with the most votes compete in a runoff election. He said that most legislative primaries are uncontested and that less than a fifth of contested primaries result in runoffs. He said that 41 percent of winners in runoff elections nationwide receive the second-most votes in the original primary; that Texas has the highest percentage of flipped results (53 percent); and that runoffs have low turnouts compared to primary or general elections. Pallay said voter turnout drops 40 percent in runoff elections. He said that Texas has the longest average gap between elections, at 84 days, however, he does not see a direct relationship between voter turnout and the time gap, and that multiple factors contribute to low voter turnout in runoff elections.

C. Recommendations

The Legislature should weigh the competing interests between ensuring that a candidate for office has broad support of the candidate's party with the time and expense of holding a primary runoff. The Committee recommends that the time between the primary and the runoff be shortened which would allow candidates to preserve funds for the general election. The Committee also recommends lowering the 50% threshold.

²⁰¹ Tex. Elec. Code Ann. § 41.007.

²⁰² S.C. Code Ann. § 7-13-50.

²⁰³ Supplemental written testimony of Geoff Pallay.

²⁰⁴ *Id.*

CHARGE NO. 8

Lottery: Study “lottery courier services,” which allow their clients to purchase lottery tickets over the internet. Report on the number of couriers and the magnitude of sales from such services in Texas. Determine whether courier services are operating legally in Texas and whether a change in law is needed to respond to technological advancements to protect children in our state and to maintain original legislative intent. Recommend legislation to clarify Texas’s laws regarding online lottery sales.

A. Background

The Texas Lottery Commission (TLC) administers the state lottery and regulates charitable bingo activities. The Lottery Commission has operated the lottery since 1993 and regulated charitable bingo since 1994. Texas law requires that TLC exercise strict control and close supervision over both games.

The mission of the Commission is to generate revenue for the state, majorly for the Foundation School Fund and the Fund for Veterans’ Assistance, through responsible management and sale of lottery products and to provide nonprofit organizations the opportunity to raise funds for charitable purposes.²⁰⁵ To achieve this, the Commission licenses lottery retailers, develops, approves, and markets lottery games, conducts lottery drawings, and processes winning ticket claims; administers several major contracts for lottery operations and services, scratch ticket production, and drawing studio and production services, among others; and licenses and regulates bingo industry participants, collects bingo prize fees for the state, and ensures licensees remit prize fees to local governments.²⁰⁶

The lottery has generated record sales in each of the last 13 years, resulting in over \$19 billion for the Foundation School Fund and around \$215 million for the Texas Veterans Commission.²⁰⁷ Without this funding, the state would need other sources of revenue to make up for the over \$2 billion the lottery brought in for education and veterans’ programs last year.²⁰⁸ While bingo is in decline, in fiscal year 2023, the state received nearly \$16 million, and local governments received \$13 million in proceeds.²⁰⁹

The Commission is currently under review before the Texas Sunset Advisory Commission.

B. Discussion

Over the past six years, at least four lottery ticket courier companies have been operating in Texas. Couriers are unlicensed service providers that take order from customers, either through an internet

²⁰⁵ *Agency at a Glance*, Texas Lottery Commission Staff Report, Sunset Advisory Commission (May 2024), <https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Lottery%20Commission%20Staff%20Report%20with%20Commission%20Decisions.pdf>.

²⁰⁶ *Id.*

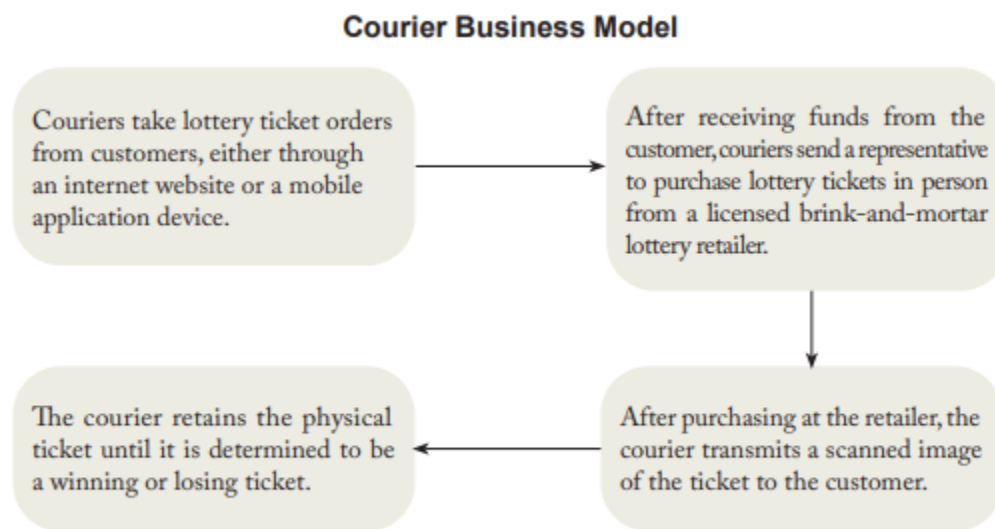
²⁰⁷ *The State Has a Continuing Need for the Texas Lottery Commission*, Texas Lottery Commission Staff Report , Sunset Advisory Commission (May 2024), <https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Lottery%20Commission%20Staff%20Report%20with%20Commission%20Decisions.pdf>.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

website or mobile device application, purchase the tickets at licensed retailers, which are sometimes directly affiliated with the courier company, and then provide a scanned image of the ticket to the customer while retaining the physical ticket. Over time, the presence of these services has grown, with some couriers now responsible for significant portions of lottery sales at certain retail locations.

Couriers represent an estimated 9 percent of TLC’s draw tickets sales.²¹⁰ The Lottery Commission reports that estimated lottery ticket sales via couriers was around \$173.1 million for FY 2023.²¹¹ This significant market share is largely concentrated among a few key retail locations that have partnered with these companies. One retail location in Austin associated with the courier service Jackpocket reported sales of over \$89 million in fiscal year 2023, making it one of the top-selling lottery retailers in the state. Other retailers partnering with courier services like theLotter and Lottery.com have also reported multi-million dollar sales figures, indicating that these couriers are driving a considerable amount of business for select retailers.



Source: Sunset Advisory Commission

The Commission first learned about the business model of couriers in 2015 when companies began inquiring about operating in Texas. However, agency staff determined that the agency lacked the authority to regulate courier services or TLC licensees’ interaction with couriers and did not formally raise the issue to the commission or seek its guidance in public meetings.²¹² The Sunset Commission’s Staff Report reviewing TLC has commented that “the agency has not proactively brought forward significant policy considerations, like the regulation of courier companies.”²¹³ As

²¹⁰ *Summary of Sunset Staff Report*, Texas Lottery Commission Staff Report, Sunset Advisory Commission (May 2024), <https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Lottery%20Commission%20Staff%20Report%20with%20Commission%20Decisions.pdf>.

²¹¹ *Issue: 1 Lottery Ticket Courier Companies*, Self-Evaluation Report for Texas Lottery Commission provided to the Committee and Sunset Commission.

²¹² *Failure to address industry challenges*, Texas Lottery Commission Staff Report, Sunset Advisory Commission (May 2024), <https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Lottery%20Commission%20Staff%20Report%20with%20Commission%20Decisions.pdf>.

²¹³ *Id.*

a result, TLC did not adequately elevate the issue to the Legislature’s attention before a 2022 House Licensing and Administrative Procedures Committee hearing on gaming or take other action such as requesting an attorney general opinion regarding the limits of its legal authority.²¹⁴

According to the Sunset Commission, before submitting its Self-Evaluation Report to Sunset staff, TLC offered no proactive recommendations and little information about the controversial business model.²¹⁵ The fact that couriers accounted for an estimated \$173 million according to the Legislative Budget Board, or 9 percent of TLC’s draw ticket sales in fiscal year 2023, underscored the commission’s responsibility to inform the Legislature about developments that impact lottery sales and the general public that plays the lottery.²¹⁶

The Texas Lottery Commission maintains that couriers are a private business activity that occurs outside the regulated ticket purchase process and that couriers have no business or regulatory relationship with the Texas Lottery, meaning that they purport to have no authority over couriers at all.²¹⁷ This stance has resulted in in limited regulatory oversight.

1. Current Texas Law

While the Texas Lottery Commission believes that they have no regulatory oversight over couriers, this is contradictory to current Texas law. Many courier ticket purchases are made via mobile applications on phones.

Texas Government Code Section 466.015(b)(4) specifically allows the Commission to adopt rules to enforce “prohibitions on a person playing a lottery game by telephone.” Texas Administrative Code Section 401.355(a) supports this by saying “retailers shall not sell lottery tickets by mail, phone, fax, or other similar method of communications.” In addition, on the Texas Lottery Commission’s website under “Frequently Asked Questions” the agency states that “state laws and regulations do not permit the sale of tickets by mail, phone, or Internet.”²¹⁸ While the purchase for the ticket is in fact made in person through the courier, the purchaser is still playing the lottery through a telephone accessing the Internet.

2. Legislative Action

During the 88th Regular Legislative Session, S.B. 1820 was filed to mandate that the Texas Lottery Commission prohibit couriers from operating in Texas. While the House did not consider the legislation, it was placed in a budget rider added to Article IX of the Appropriations Bill. While the Appropriations Bill was signed by the Governor, he did declare in the proclamation that the rider was unconstitutional because the rider purports to make general law. This legislation has been refiled for the 89th Legislative Session as S.B. 79.

²¹⁴ *Id.*

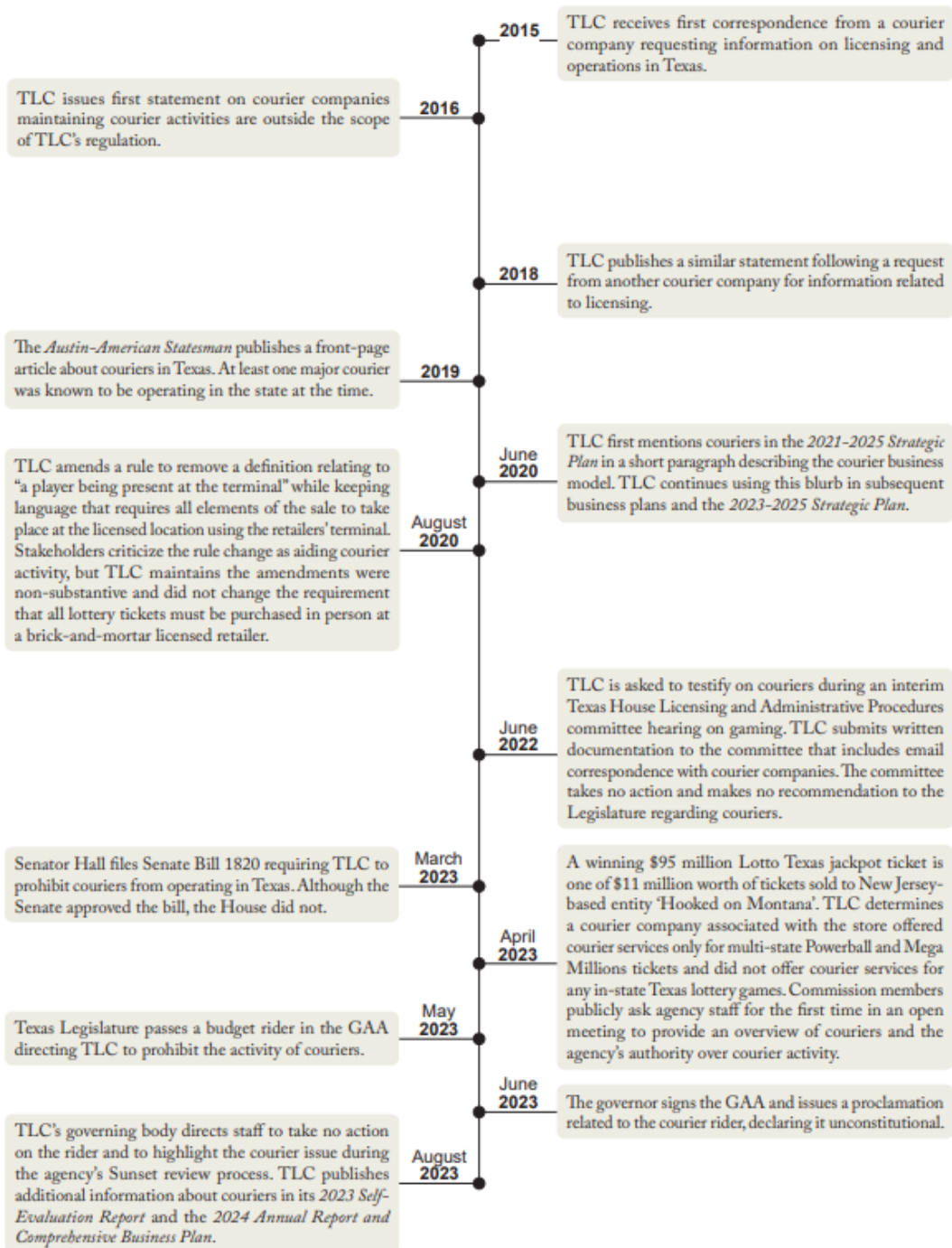
²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Issue: 1 Lottery Ticket Courier Companies*, Self-Evaluation Report for Texas Lottery Commission provided to the Committee and Sunset Commission.

²¹⁸ *Frequently Asked Questions*, Texas Lottery, <https://www.texaslottery.com/export/sites/lottery/FAQ/index.html>.

Courier Timeline



GAA: General Appropriations Act

Source: Sunset Advisory Commission

3. Exposure to Children

Another concern highlighted by the presence of couriers is the potential for underage individuals to purchase lottery tickets. Since couriers are not directly regulated by the Texas Lottery

Commission, there is no guarantee that age verification processes align with state regulations designed to prevent minors from gambling.

C. Interim Hearing

On October 15, 2024, the Senate Committee on State Affairs held an interim hearing covering the Lottery charge provided by the Lieutenant Governor. Invited testimony consisted of the Texas Lottery Commission.

Ryan Mindell, Executive Director of the Texas Lottery Commission (TLC), explained to the committee the business model of lottery couriers and said that lottery couriers account for approximately two percent of total lottery sales. Mindell said that the last fiscal year TLC saw a slight revenue decrease but it was still the second-highest sales year on record, and that Texas leads the nation in scratch ticket sales. He explained that licensed lottery retailers regularly sell lottery tickets to couriers and that once a lottery ticket is sold to a courier, TLC has no control over its subsequent sale. He said that TLC remains neutral regarding legislative action to regulate lottery couriers. He discussed TLC's efforts to prevent minors from purchasing lottery tickets by running educational campaigns and ensures that retailers check the ages of lottery purchasers to prevent minors from buying lottery tickets.

When asked whether the lottery has exacerbated gambling addiction, Mindell said that excessive gambling is a problem but that there is no indication that lottery sales have made gambling addictions worse. Mindell said that TLC has not attempted to expand its authority and that he is willing to work with the Legislature to resolve issues posed by lottery couriers.

D. Recommendations

The Legislature should clarify that lottery couriers should not be allowed to operate in Texas.

The Legislature should prevent minors from being exposed to gambling via couriers.

CHARGE NO. 9

Unmasking Protestors: *Study the use of face coverings and hoods designed to conceal the identity of those bent on committing crimes at protests. Recommend legislation to stop the chaos and destruction by those who attempt to commit crimes while concealing their identity during public gatherings.*

A. Background

The connection between face concealment and disorder has become more prevalent over the past year. For example, thousands of demonstrators, many with their faces concealed, flooded Washington in June, some sporting symbols of support for the US-designated terrorist group Hamas. They occupied and vandalized Lafayette Square across from the White House, spray painting statues and setting off a smoke bomb. U.S. Park Police officers and Secret Service agents attempted to apprehend a protestor, but unidentifiable demonstrators formed a mob and successfully chased them out of the park, preventing any arrests.²¹⁹

Masking has also made it difficult to stop protestors from impeding critical urban infrastructure. In the six months following October 7, 2023, New York City experienced about 2,000 protests with masked individuals including incidents involving more than 10,000 participants illegally blocking bridges and major city infrastructure.²²⁰

Earlier this year in April, at the University of Texas at Austin, dozens of local police and state troopers were called in to contain chaotic protestors, preventing a planned occupation of the main campus lawn²²¹ and making 57 arrests.²²² A UT-Austin spokesperson explained that law enforcement was called because protestors violated the school's "no mask" rules²²³ for demonstrations.²²⁴

²¹⁹ Megan Lebowitz, *Thousands gather outside White House to protest war in Gaza*, NBC News (June 8, 2024), <https://www.nbcnews.com/politics/white-house/thousands-gather-white-house-protest-war-gaza-rcna156186>.

²²⁰ *Pro-Palestinian Demonstrators Block N.Y. Bridge and Tunnel Traffic*, New York Times (Jan. 8, 2024), <https://www.nytimes.com/2024/01/08/nyregion/palestinian-protest-holland-tunnel-brooklyn-bridge.html>.

²²¹ Karen Matthews and Nick Perry, *Police tangle with students in Texas and California as wave of campus protest against Gaza war grows*, PBS News (April 24, 2024), <https://www.pbs.org/newshour/nation/columbia-university-says-its-making-important-progress-with-gaza-protesters>.

²²² Pooja Salhotra, *Travis County rejects all criminal trespass charges against 57 people arrested at UT-Austin protest*, The Texas Tribune (April 25, 2024), <https://www.texastribune.org/2024/04/25/ut-austin-palestinian-arrests-criminal-cases/#:~:text=A%20Travis%20County%20sheriff%20spokesperson,felony%20charges%20brought%20against%20protestors>.

²²³ Sec. 13-105, a(i), Speech Expression, and Assembly, Appendix C: Institutional Rules on Student Services and Activities, The University of Texas at Austin, <https://catalog.utexas.edu/general-information/appendices/appendix-c/speech-expression-and-assembly/>.

²²⁴ Sneha Dey, *Gov. Greg Abbott and UT-Austin shift from championing free speech to policing protesters' intentions*, The Texas Tribune (April 29, 2024), <https://www.texastribune.org/2024/04/29/ut-austin-pro-palestinian-demonstrations-free-speech/>.

B. Discussion

1. Arrest and Prosecution Hurdles

Face concealment makes it harder for law enforcement to make arrests and harder for prosecutors to sufficiently identify offenders to bring successful cases. Offenders also tend to behave worse when they are masked.

For example, at Columbia University, protestors with faces masked by surgical masks, hoods, and keffiyehs vandalized a campus building, taking two maintenance staff hostage. The inability to identify defendants with certainty because of masking was cited by the Manhattan District Attorney in dismissing for lack of evidence 31 of the 46 associated trespass arrests.²²⁵

2. Texas Law and the First Amendment

Historically, bans on the use of facemasks were aimed at preventing violent demonstrations. Similar to numerous other jurisdictions across the country, Texas passed an anti-mask law in 1925 in response to the rise in activity by the Ku Klux Klan, whose members wore masks and hoods to hide their identities while committing acts of violence and intimidation against African Americans, Catholics, and other minority groups.²²⁶ The original intent of this law was to dismantle the Klan's ability to operate unseen and ultimately unpunished. As a result, this prohibition contributed to the reduction of Klan influence and enhanced the ability of law enforcement to identify and prosecute hate crimes and public disorder.²²⁷

It is argued that anti-masking laws are essential to preserving the First Amendment right to assemble, petition for redress of grievances, or otherwise show one's freedom of expression, while preventing intimidation and harassment, maintaining a society where individuals are accountable for their conduct.²²⁸

3. Other Jurisdictions and Mask Bans

New York and other states repealed their similar mask bans during the emergency conditions of the Covid-19 pandemic. However, many still have these laws in place, each with their own distinct version for preventing the same abuses.²²⁹

²²⁵ Erik Ortiz, et al., *Manhattan DA drops charges against most of the Columbia University protestors*, NBC News (June 20, 2024), <https://www.nbcnews.com/news/us-news/manhattan-da-drops-charges-columbia-university-protesters-hamilton-hal-rcna157976>.

²²⁶ This law was codified as Article 454a-g of the Texas Penal Code and remained until the re-codification of the Texas Penal Code in 1974.

²²⁷ Hannah E. Meyers, et al., *Model Legislation to Modernize Anti-KKK Masking Laws for Intimidating Protestors*, The Manhattan Institute (June 5, 2024), <https://manhattan.institute/article/model-legislation-to-modernize-anti-kkk-masking-laws-for-intimidating-protestors>.

²²⁸ *Written testimony of Hannah Meyers on behalf of the Manhattan Institute for Unmasking Protestors Charge: Hearing Before the S. Comm. on State Affairs*, 2024 Leg., 88th Interim (Oct. 16, 2024).

²²⁹ *Id.* at 6.

In Alabama, it's illegal to wear a mask or hood in public places, with a few exceptions, such as for holiday costumes or occupational safety gear. In California, it's illegal to wear a mask or disguise to evade police detection while committing a public offense. In Florida, it's prohibited to wear a mask or hood in public places and on public roads. In Georgia, it's unlawful for any person to wear a mask in public places or on private property without the owner's permission, unless for work safety, theatrical productions, or emergency protection.²³⁰

In Louisiana, it's prohibited to wear masks in public with the intent to conceal one's identity, except for religious purposes, safety in occupations, or traditional holiday costumes like Mardi Gras. Michigan prohibits people from wearing a mask or any type of face covering that conceals their identity during the commission of a crime. North Carolina bans masking in public spaces. Finally, Virginia prohibits any person over 16 years old from wearing a mask with the intent to conceal his or her identity in public spaces or on private property without written permission from the property owner.²³¹

C. Interim Hearing

On October 16, 2024, the Senate Committee on State Affairs held an interim hearing covering the unmasking protestors charge provided by the Lieutenant Governor. Invited testimony included the Texas Department of Public Safety and the Manhattan Institute.

1. Texas Department of Public Safety

Major Ralph Ohland, representing the Criminal Investigation Division of the Texas Department of Public Safety, discussed the challenges of identifying criminals when they wear masks, particularly during large protests. He said masks embolden protestors to commit crimes because they know the task of identification by law enforcement will be difficult and that over a dozen unidentified masked individuals are wanted for crimes committed during protests in Austin within the last year. He said that wearing masks as a tactic to evade identification is especially common in groups such as Antifa. He also discussed professional protestors at the Texas Capitol and UT in recent years. Ohland told the committee that agitators at many protests attempted to cause harm and chaos, and police forces, having learned from previous protests, now arrest protestors who hide their identity for nefarious purposes.

2. The Manhattan Institute

Hannah Meyers, Director of Policing and Public Safety for The Manhattan Institute, said she urged the legislature to pass constitutional and effective legislation banning masks at protests. She reiterated that masks increase crime at protests when they are used to evade identification. She noted increases in anti-Israel and anti-Semitic sentiments by mask-wearing protestors since October of 2023. She said mask bans are critical tools for prosecutors and cited arrests at recent protests at The University of Texas at Austin. She said that increases in shoplifting and robbery nationwide can be attributed in part to mask usage, and several states have implemented mask bans that do not infringe on constitutional rights.

²³⁰ *Id.*

²³¹ *Id.*

Meyers said that model legislation has already been drafted and implemented in certain counties, and that most current mask bans result in a misdemeanor charge and a fine. She stated that potential exceptions should allow masks for religious observance, for legitimate health needs, and during popular holidays such as Halloween. She also said the law should be applied circumstantially, targeting masking used by individuals attempting to conceal their identity.

D. Recommendations

The Legislature should pursue legislation to prevent violent protestors from masking their identities while also balancing First Amendment rights.

CHARGE NO. 10

Stop Noncitizen Voting: *Evaluate the current safeguards in place to prevent noncitizens from voting in elections. Recommend legislation to facilitate the removal of noncitizen voters from the voter rolls as well as legislation to prevent noncitizens from registering to vote in Texas.*

A. Background

Under the Texas Election Code, to be a qualified voter, a person must be a United States Citizen.²³² Questions have been raised about the state’s ability to prevent noncitizens from registering to vote and vote in Texas elections. Prior to the 2024 General Election, Texas Governor Greg Abbott announced that since 2021, Texas had removed over 6,500 noncitizens from its voter rolls.²³³ The presence of these voters on the rolls raises questions about Texas’ voter registration process and how so many noncitizens were registered to begin with.

1. Texas Constitution – Right of Citizens to Vote

Article VI, Section 2 of the Texas Constitution is clear that every person, subject to other restrictions, who is a citizen of the United States is qualified to vote in Texas. The language of the Constitution, however, does not explicitly exclude noncitizens from voting. In other states, activists have used this lack of exclusion as a basis to allow noncitizens to vote at the local level. In New York City, for example, the New York City Council approved an ordinance extending the right to vote to noncitizens²³⁴ arguing that the New York Constitutional provision allowing “every citizen”²³⁵ the right to vote did not exclude noncitizens from voting. Courts in New York disagreed but it is possible for the same argument to be raised in Texas.²³⁶

2. Texas Voter Registration

Texas has two primary ways of registering to vote. An applicant can register when applying for a driver’s license with the Department of Public Safety (DPS) or they can register using a paper form. When registering at DPS, the potential voter will be required to provide proof of their citizenship status to prove that they are a legal resident of the United States.²³⁷ If the applicant is not a legal resident, the applicant should receive neither a driver’s license nor be registered to vote. If the applicant is a legal resident, but not a citizen, the applicant should be issued a driver’s license but should not be registered to vote. Finally, if the applicant is a citizen, the applicant should be both issued a driver’s license and be registered to vote. In all cases, the applicant will be required

²³² Texas Election Code § 11.002(a)(2).

²³³ Governor Abbott Announces Over 1 Million Ineligible Voters Removed From Voter Rolls, Office of the Texas Governor (Aug. 26, 2024), <https://gov.texas.gov/news/post/governor-abbott-announces-over-1-million-ineligible-voters-removed-from-voter-rolls>.

²³⁴ Erin Durkin, *New York Is About To Let Noncitizens Vote. It Could Reshape Local Politics Forever*, Politico, (Mar. 2, 2022), <https://www.politico.com/news/2022/03/02/new-york-noncitizen-voting-00012970>.

²³⁵ New York Constitution, Article II, § 1

²³⁶ Jonathan Allen, *New York Judge Rules Law Allowing Noncitizens to Vote for Mayor is Unconstitutional*, Reuters (June 27, 2022), <https://www.reuters.com/world/us/new-york-judge-rules-law-allowing-non-citizens-vote-is-unconstitutional-2022-06-27/>.

²³⁷ Verifying Lawful Presence, Texas Department of Public Safety, <https://www.dps.texas.gov/sites/default/files/documents/driverlicense/documents/verifyinglawfulpresence.pdf>.

to present documentation that the person is a citizen.²³⁸ Roughly 85% of voter registrations are received through DPS.

An applicant does not have to register to vote at DPS. An applicant can request a paper form from either the Texas Secretary of State or their local voter registrar. The form is like the Federal Form for Voter Registration and requires the applicant to swear to the fact that the applicant is a citizen. No further documentation, other than the attestation, is required to submit the form and be registered. Even though the voter is registered, the voter registrar must verify citizenship. If the voter does not provide proof of citizenship within 30 days, the voter registrar shall send the voter a notice of cancellation.²³⁹

Approximately two-thirds of the paper forms received list a Texas driver's license number. This is indicative, but not dispositive that the applicant is a citizen. It is not dispositive because Texas does provide driver's licenses to lawful residents. A paper applicant could have a valid driver's license but not be a citizen. The other one-third of the paper applications contain a social security number. This also does not prove citizenship because social security numbers can be and are routinely issued to lawful residents.

3. Texas Voter List Maintenance

The Texas Secretary of State recently issued an advisory detailing required list maintenance activities to local election officials.²⁴⁰ With respect to non-citizenship, DPS notifies the Secretary of State weekly of all persons who indicate to DPS that they are not a citizen.²⁴¹ The Secretary also receives information concerning jury service and whether a voter has moved, died, or indicated that they could not serve on a jury due to non-citizenship.²⁴²

B. Interim Hearing

On October 16, 2024, the Senate Committee on State Affairs held an interim hearing covering the stop noncitizen voting charge. Invited testimony included the Secretary of State, Office of the Attorney General, Texas Department of Public Safety, Honest Elections, the Election Transparency Initiative, and the Arizona Free Enterprise Club.

1. Election Transparency Initiative

Ken Cuccinelli, chairman of the Election Transparency Initiative, said that he formerly headed U.S. Citizenship and Immigration Services, which houses the Systematic Alien Verification for Entitlements (SAVE) system. He said the SAVE database is used by government agencies to verify a noncitizen's immigration status and that millions of noncitizens are currently unaccounted for.

Cuccinelli discussed how the Safeguard America Voter Eligibility (SAVE) Act, which would require individuals to provide documented proof of U.S. citizenship during voter registration in federal elections and give states authority to perform citizenship checks for the purpose of voter registration, is making its way through the U.S. Congress.

²³⁸ See Texas Administrative Code §§ 81.8 and 81.402.

²³⁹ *Id.*

²⁴⁰ Texas Secretary of State, Election Advisory No. 2024-18.

²⁴¹ *Id.*

²⁴² *Id.*

Cuccinelli also discussed the difficulties involved in aligning state databases to the SAVE systems. He said Texas and Nevada were the only two states to use the SAVE system during his tenure, and that while Texas sent hundreds of thousands of names of suspected noncitizens to the database, slight differences in names required labor to align the systems. Cuccinelli said that the Social Security Administration gives Social Security cards and numbers to noncitizens but that he is unsure whether a federal record of citizen status is kept for each person. He said even if complete records were kept, it would be difficult for Texas to access that information because the Social Security Administration is notoriously uncooperative. Cuccinelli recommended Texas follow the example of Arizona and add a dual-registration system.

2. Secretary of State

Christina Adkins, Elections Director of the Secretary of State, said the legislature has been clear in its intention to ensure that only U.S. citizens register and vote in elections. She said the DPS list maintenance process set out by S.B. 1 is the most effective tool to identify and remove noncitizens from voter rolls. Her office receives a weekly update of notifications to DPS about noncitizens lawfully residing in the U.S., and the secretary of state compares that information to data in its database to determine the accuracy of voter rolls and investigate voter fraud. Adkins said that registered noncitizens can be located by means of jury summons responses and citizen challenges to registrations, and Secretary of State Jane Nelson is committed to fair and accountable elections. Adkins said fair elections start with voter registration lists.

She said all incidents of a noncitizen registered to vote are referred to the relevant local county for investigation. Those counties then investigate and most often send an initial notice of investigation to the person of interest. She said individuals can be reenrolled to the voter registration list if they provide relevant citizenship documents or they can stay removed from the rolls by declaring themselves noncitizens or not responding. Since 2021 more than 6,500 people have been removed from voter rolls. Adkins said that the reported 581 noncitizens in the Texas Tribune only accounts for people who have declared non-citizenship through jury summons responses, DPS processes, or other means. She said the remaining 6,000 received a notice of investigation and did not respond, likely to avoid self-incrimination, which removed them from the voter registry but did not confirm them as noncitizens.

Adkins said that if someone tries to vote without acceptable identification, they are turned away. She said individuals complete a reasonable impediment declaration in rare circumstances. This declaration is for voters who do not possess acceptable identification and cannot reasonably obtain it and requires individuals to swear they cannot obtain identification, provide reasons, and give relevant information to a presiding judge. Adkins said that an individual who appears to vote with proper identification but is not on the voter roll would receive a provisional ballot as well, but provisional ballots are issued sparingly, most often when someone is not on the voter registration list. She explained there is a six-day cure period during which the voter can provide proper documentation to a registrar; provisional ballots are kept separate and sealed and are not counted until the board has verified them.

Adkins said that it is possible for noncitizens to register to vote through paper application forms, which account for 15 percent of all registrations. She said two-thirds of paper applications report driver's license numbers and the rest use the last four digits of a Social Security number. She said the Office of the Secretary of State must confirm applicants are alive but that no statute requires citizenship to be verified.

3. Office of the Attorney General

Josh Reno, Deputy Attorney General for Criminal Justice, discussed the actions the OAG has taken to combat voting by noncitizens. He said the best way to solve the problem is for the federal government to pass the SAVE Act. He said OAG has made major efforts to ensure election integrity, defended S.B. 1 against ongoing litigation, put out an election advisory on illegal voting and registration by noncitizens, and continues its investigations of countywide voting issues. Reno said that OAG investigates these crimes but that prosecution issues arise in areas when no invitation to investigate is given by local government. He said local officials must ask OAG to investigate and that officials are unwilling to prosecute one another.

4. Texas Department of Public Safety

Sheri Gipson, Chief of the Driver License Division for the Texas Department of Public Safety, discussed the DPS driver's license application process and the agency's recordkeeping. She said Texas is a single issuance, REAL ID compliance state, which requires all who apply for a driver's license or a government identification card to meet identity, citizenship, lawful presence, and residency requirements. She said lawful presence documents must be verified through the SAVE system and proceed through additional manual verification levels if the system does not come back with a positive finding. Because new citizens are not required to immediately notify DPS and update their driver's licenses, data verifying citizenship in the driver's license system is only as accurate as the last entry. Gipson said DPS sends the Office of the Secretary of State daily updates on voter registration application data, name changes, dates of birth, address changes, and official naturalization information. DPS also provides a weekly update on noncitizen interactions with the agency.

5. Honest Elections

Jason Snead, who was representing Honest Elections, discussed the strong support nationwide for efforts to prevent noncitizens from voting and described myths associated with noncitizen voting. He said it is a myth that there is little evidence of widespread noncitizen voting and that multiple states, including Texas, have extensive noncitizen voting. He said that elections can be determined by small margins and votes cast by noncitizens should not impact outcomes. He said laws against fraudulent voting must be enforced. Snead recommended that the legislature bolster proof of citizenship in its voting requirements, bar state agencies from providing voter registration material to noncitizens, and require elected officials to use all available resources to identify noncitizens. He said lawmakers should address the 2021 *The State a/Texas v. Ex Parle Zena Collins Stephens* decision, which strips the attorney general of the power to prosecute election crimes. He said Texas should never adopt automatic voter registration policies or provide driver's licenses to undocumented immigrants.

6. Arizona Free Enterprise Club

Greg Blackie, representing the Arizona Free Enterprise Club, outlined the history of Arizona's 2022 voter registration law. He said that in 2004, Arizona passed a bill requiring proof of citizenship for all voter registration and that in 2013, the Supreme Court ruled that Arizona's bill was preempted by the National Voter Registration Act, which required states to use federal forms for federal elections and not require additional information from applicants. He said Arizona voter registration requirements differed from federal guidelines. He said federal form applicants without identification could register to vote in federal elections but that state form applicants without identification could not vote. Blackie said that this situation continued until 2018 when Arizona's secretary of state agreed to treat state forms the same as federal forms and that in the 2018 midterms, 1,700 federal-only ballots were cast. In the 2020 election, the first since the agreement was reached, the number of federal-only ballots rose to 11,600.

Blackie said Arizona passed a bill in 2022 in response to that ballot increase. He said the main provisions of the bill required a return to the previous Arizona policy. The bill requires that federal forms submitted without proof of citizenship trigger 10 days of investigation. He said that an applicant who is found to be a citizen remains registered; an applicant who is found not to be a citizen is rejected and the local county investigates the matter; if the government is unable to determine citizenship, the person is registered to vote but can only vote in person and in limited races. He said such a person cannot vote by mail or in the presidential election. Blackie recommended that Texas adopt a similar law.

C. Recommendations

The right to vote should only be extended to United States citizens. The Committee recommends that the Legislature amend Article VI, Section 2 of the Texas Constitution to clarify that only citizens are entitled to vote in Texas.

The Committee also recommends that the Legislature adopt an Arizona style system to require documented proof of citizenship at the time of voter registration.

The Secretary of State and the Attorney General should also be given all necessary authority and obligation to access and utilize all federal sources of information to determine if every individual currently on the Texas voter rolls is eligible to vote.

There should be a clear identifiable distinction on a driver's license that the holder is a noncitizen.

In addition, the Committee recommends that any voter whose voter registration file does not indicate that they have previously provided documented proof of citizenship must provide it in order to be eligible to vote.

Finally, the Committee recommends that the Secretary of State be required to cancel a voter's registration when Department of Public Safety data shows that the registrant has acquired a driver's license in another state.

CHARGE NO. 11

Beverages with THC: *Evaluate Texas laws and regulations concerning THC beverage manufacturing and delivery. Report on the current regulations and safeguards Texas may or may not have in place for drinks with any amount of THC. Recommend legislation to protect Texas consumers.*

A. Background

See background under Charge No. 5.

B. Discussion

Cannabis or THC infused drinks have flooded the market in Texas in the wave of the hemp derived products that have emerged across the state. Many cannabis-infused drinks list THC as an ingredient, and while there is no standard dose, 5 milligrams (mg) is typically used in research studies of the drug.²⁴³ Some lower dose beverages contain 2 to 4 mg of THC in an 8-ounce container.²⁴⁴ Other products have been known to contain as much as 200 mg of THC.²⁴⁵ The drinks sometimes also contain caffeine, alcohol, or other substances.

The cannabinoids found in these beverages are formulated to dissolve in liquid, meaning they are more easily and rapidly absorbed into the body's soft tissues.²⁴⁶ With availability of flavors like cherry limeade and peach mango, these products pose potential risks to children that other ingestible hemp derived products in the market are presenting.²⁴⁷ In addition, there is also no age restrictions set on these drinks and they are easily accessible at gas stations, vape shops, CBD shops, distilleries, and online.²⁴⁸

These drinks whether they are used as an alcohol alternative or for self medication present the same concerns presented in the discussion of Charge No. 5.

C. Interim Hearing

On October 17, 2024, the Senate Committee on State Affairs held an interim hearing covering the beverages with THC charge. Invited testimony included the Texas Department of State Health Services, Dr. Lindy McGee, and the Texas Alcoholic Beverage Commission.

1. Texas Department of State Health Services

Timothy Stevenson, associate commissioner for the Consumer Protections Division of the Texas Department of State Health Services, described the licensing requirements for retail sales of

²⁴³ *Cannabis drinks: How do they compare to alcohol?*, Harvard Health Publishing, Harvard Medical School (Jul. 15, 2024); <https://www.health.harvard.edu/blog/cannabis-drinks-how-do-they-compare-to-alcohol-202407153058>.

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ Testimony of Dr. Lindy McGee for Beverages with THC Charge: Hearing Before the S. Comm. on State Affairs, 2024 Leg., 88th Interim (Oct. 17, 2024).

²⁴⁸ *Id.*

alcoholic and nonalcoholic beverages containing hemp derivatives and the licensing requirements for bars that serve beverages containing hemp derivatives.

2. Dr. Lindy McGee

Lindy McGee, a practicing pediatrician, said the rate of accidental ingestion of THC products by minors is increasing. She said the likelihood that THC products cause psychosis and developmental harm to minors is high. She also added that the use of drugs, including THC, by minors increases the likelihood of addiction later in life. McGee was unable to outline how medical dosages of THC compare to intoxicating substances due to a lack of research on such topics. She recommended the minimum purchasing age be set at 21, that childproof labelling be required, and that regulation be crafted to ensure THC beverage purity.

3. Texas Alcoholic Beverage Commission

Thomas Graham, executive director of the Texas Alcoholic Beverage Commission (TABC), described the process through which alcoholic beverages and beverages containing THC are authorized for sale by the federal Alcohol and Tobacco Tax and Trade Bureau (TTB) and TABC. He said that the TTB is not currently approving beverages containing both alcohol and THC. Graham informed the committee that TABC does not regulate nonalcoholic products at off-premises retailers. He said upper tier services in three-tier systems are prohibited from paying businesses to sell their products and that products are sold through consignment. He said that the organization does not regulate alcoholic beverages with alcohol contents below 0.05 percent.

D. Recommendations

The Committee recommends that drinks containing THC, except for those that are regulated by the Texas Compassionate Use Program, should be banned in agreement with the recommendations listed in Charge No. 5.

CHARGE NO. 12

Public Trust in Government: *Examine the current state of accountability, ethics, and transparency in local government. Recommend ways to bolster public trust in local government by strengthening the Public Information Act and Open Meetings Act.*

A. Background

James Bryce wrote that sunlight kills the germs of corruption that can infect a government. The original purpose of the Texas Public Information Act (TPIA) and the Texas Open Meetings Act (TOMA) is to be that sunlight and enable the people of Texas to observe how their government works and hold their public officials accountable.

1. Texas Public Information Act

The Texas Public Information Act was adopted in 1973. The preamble of the Act finds that “the American constitutional form of representative government” and “the principle that government is the servant and not the master of the people.”²⁴⁹ The purpose of the Public Information Act is to maintain the people’s control “over the instruments they have created.”²⁵⁰

The Act gives the public the right to request access to government information.²⁵¹ The TPIA is triggered when a person submits a written request to a governmental body. The request must ask for records or information already in existence. A person may ask to view the information, get copies of the information, or both. If a request is for copies of information, the governmental body may charge for the copies.²⁵² Although the TPIA makes most government information available to the public, there are some exceptions.²⁵³

If an exception might apply and the governmental body wishes to withhold the information, the governmental body generally must, within ten business days of receiving the open records request, refer the matter to the Office of the Attorney General (OAG) for a ruling on whether an exception applies. If the OAG rules that an exception applies, the governmental body will not release the information. If a governmental body improperly fails to release information, the Act authorizes the requestor or the OAG to file a civil lawsuit to compel the governmental body to release the information.²⁵⁴

2. Texas Open Meetings Act

Adopted in 1967, the Texas Open Meetings Act generally requires government entities to keep official business accessible to the public unless a closed session is expressly authorized.²⁵⁵ The Act applies to a governmental body, as defined by subsection 551.001(3), when it engages in a

²⁴⁹ Tex. Gov’t Code Sec. 552.001.

²⁵⁰ *Id.*

²⁵¹ See Public Information Act Handbook 2024, Office of the Attorney General, https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/publicinfo_hb.pdf.

²⁵² *Id.*

²⁵³ Public Information Act Handbook 2024, page 73.

²⁵⁴ Public Information Act Handbook 2024, page i.

²⁵⁵ See Open Meetings Handbook 2024, Office of the Attorney General, https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/openmeetings_hb.pdf.

“regular, special, or called meeting.”²⁵⁶ Informal meetings of a quorum of members of a governmental body are also subject to the Act.²⁵⁷

Some authorized closed sessions are where the governmental body consults with its attorney to seek legal advice concerning pending or contemplated litigation, a settlement offer, or where the duty of the attorney conflicts,²⁵⁸ or where the body makes deliberations regarding real property²⁵⁹ or contracts^{260, 261}.

B. Discussion

It has been reported to the Committee that there are a number of issues that everyday people face when they place an information request against their local government entities.

1. Enforcement

The Committee learned that some local governments do not respond to information requests, and some fail to provide all the requested publicly releasable records.²⁶² In these cases, a requestor should be able to file a complaint with the attorney general, and government officials found to have acted wrongly should face consequences like mandatory training over TPIA and TOMA. Some have even suggested that allowing mediation between the requestor and the local government would aid in making the law work as intended to making the process more user-friendly.²⁶³

2. Searchable Records

One frustration that the Committee heard about was the searching and sorting of documents received by local governments. Many local government entities store public information in electronic spreadsheets, but convert these documents to PDF images before producing them to the public. This conversion is unnecessary and makes it more difficult to search and sort information. For years, the Office of the Attorney General’s has recommended producing documents in their original format, including spreadsheets.²⁶⁴

3. Attorney’s Fees

It has also been reported to the Committee that it is extremely difficult for requestors to recover attorney’s fees under the TPIA. This precedent allows local governmental bodies to hand over documents at the last minute, even after months of litigation, and avoid paying any fees.

²⁵⁶ Tex. Gov’t Code Sec. 551.002.

²⁵⁷ *Acker v. Tex. Water Comm’n*, 790 S.W.2d 299, 300 (Tex. 1990) (considering meeting in restroom of two members of three-person board); *Bexar Medina Atascosa Water Dist. v. Bexar Medina Atascosa Landowners’ Ass’n*, 2 S.W.3d 459, 460–61 (Tex. App.—San Antonio 1999, pet. denied) (considering “informational gathering” of water district board with landowners in board member’s barn).

²⁵⁸ Tex. Gov’t Code Sec. 551.071.

²⁵⁹ Tex. Gov’t Code Sec. 551.072.

²⁶⁰ Tex. Gov’t Code Sec. 551.0725.

²⁶¹ See Open Meetings Handbook 2024 for a complete list.

²⁶² Written testimony of the Texas Sunshine Coalition for Public Trust in Government Charge: Hearing Before the S. Comm. on State Affairs, 2024 Leg., 88th Interim (Oct. 15, 2024).

²⁶³ *Id.*

²⁶⁴ *Id.*

Governments can ignore requestors, or delay releasing public information, knowing requestors may be unable or unwilling to incur the costs necessary to enforce the TPIA.²⁶⁵

C. Interim Hearing

On October 15, 2024, the Senate committee on State Affairs held an interim hearing covering the charge of public trust in government provided by the Lieutenant Governor. Invited testimony included the Office of the Attorney General, The Institute for Justice, Dallas HERO, and the Texas Public Policy Foundation.

1. Office of the Attorney General

Tamara Smith, division chief of open records for the Office of the Attorney General (OAG), said that the OAG had a 1.6 percent increase in open records letter rulings in fiscal year 2024. She discussed the quantity of calls and complaints the OAG receives and said that the number of complaints has remained consistent in recent years. She said that there are significant disparities between small towns and larger cities in the ability to process public records requests, in part because smaller state agencies have difficulty with open records requests that require the editing of videos.

2. The Institute for Justice

Arif Panju, managing attorney for The Institute for Justice, said the Texas Public Information Act (TPIA) promotes government transparency and allows taxpayers to verify how public funds are used. He said that the many exceptions to public records requests have weakened Texans' ability to monitor their government. He recommended bolstering enforcement of the information request process, allowing requesters to report lack of compliance with mandatory response times, addressing bad faith practices, enhancing the OAG's tools for ensuring compliance, and limiting open records request exceptions. Additionally, he recommended that government agencies be required to engage with requesters before invoking exemptions.

3. Dallas HERO

Pete Marocco, representing Dallas HERO, said state agencies frequently disregard laws meant to require transparency and accountability in government. He discussed violations of the Texas Open Meetings Act (TOMA) and recommended more severe penalties for future violations. He said that stronger accountability measures are needed, particularly to ensure transparency for charter amendments and ballot measures. He said that local governments frequently exploit TPIA exceptions in order to withhold information from the public, and a way to restore public trust in government would be through strengthening TPIA and TOMA.

4. Texas Public Policy Foundation

James Quintero, representing the Texas Public Policy Foundation, discussed the growing number of exceptions allowed under TPIA and said that the exceptions have significantly reduced official accountability at the state and local levels. He described a case where TPIA exceptions were used to block public access to crucial information. Quintero highlighted that there are lobbying groups

²⁶⁵ *Id.*

that train government entities on how to minimize public disclosures, and he said that this activity undermines government transparency and recommended better oversight on the expenditure of tax dollars. He also said that some publicly funded institutions interpret existing laws in ways that limit disclosure and recommended revising the law to prevent evasions of scrutiny. He recommended policy reforms to limit exceptions, redefine attorney-client privilege, and make all entities with at least 90 percent of their budgets funded by the public subject to TPIA.

D. Recommendations

The TPIA and the TOMA are important statutes supporting the right of Texans to monitor government decision making. The Legislature should further strengthen the TPIA and TOMA to ensure that local governments are transparent with the public and those they serve.

The Legislature should consider whether the list of exceptions to the TPIA and TOMA are necessary.

The Committee recommends that the Legislature look at codifying existing attorney general guidance on making documents easier to search into law.

Finally, the Legislature should look into requiring additional open government training for local governments who fail to meet the requirements of TPIA or TOMA.

CHARGE NO. 13

Addressing Homelessness: *Study programs that address the homelessness crisis in Texas. Specifically, review programs like Haven for Hope and determine whether such programs could be a model throughout our state. Propose legislation to address the root causes of homelessness by expanding successful programs for cities of all sizes.*

A. Background

Homelessness remains a significant challenge across Texas, affecting thousands of individuals and families annually.²⁶⁶ The 2024 Point-in-Time (PIT)²⁶⁷ Count revealed 10,081 people experiencing homelessness within the geography of the Texas Balance of State CoC (Continuum of Care).²⁶⁸ The report shows that 37% were sheltered, meaning they were living in an emergency shelter or transitional housing, and 63% were unsheltered.²⁶⁹ The count includes 2990 people in Emergency Shelters, 723 people in Transitional Housing, and 6,368 people unsheltered or living in a place not meant for human habitation.²⁷⁰ Chronic homelessness remains a significant challenge, with 20% of individuals reporting long-term homelessness and 18% of individuals identified as having severe mental illnesses. Substance use disorders were reported by 1,209 individuals, further complicating their paths to stability. Additionally, veterans, a highly vulnerable subpopulation, continue to face significant barriers to stable housing; in 2024, 568 participants reported that they are a veteran.²⁷¹

However, the Texas Homeless Network, which serves as the host agency for the Texas Balance of State Continuum of Care (CoC), reported that 45,511 individuals experienced homelessness in 2024 and accessed services through state and federally funded programs. This broader measurement underscores the scope of homelessness in Texas and highlights the gaps left by traditional PIT counts because they fail to capture the fluid and transitory nature of homelessness.

Philip Mangano, the former head of the U.S. Interagency Council on Homelessness, has criticized PIT counts as “one of the most unscientific activities that determines policies ever derived by the federal government.”²⁷² Moreover, because of the significant resources required to conduct a PIT count, they are typically conducted annually or biannually, limiting their ability to reflect real-time conditions. PIT counts include two main components: a sheltered count and an unsheltered count. The sheltered count uses Homeless Management Information System (HMIS) data and surveys to track individuals housed in shelters and transitional housing programs. However, unsheltered

²⁶⁶ *Point-In-Time Count (PIT) Reports*, Texas Homeless Network, <https://www.thn.org/texas-balance-state-continuum-care/data/pit-count-and-hic/#pit-information>.

²⁶⁷ The Point-in-Time (PIT) count is a count of sheltered and unsheltered homeless persons on a single night in January. HUD requires that Continuums of Care conduct an annual count of homeless persons who are sheltered in emergency shelter and transitional housing on a single night. Continuums of Care also must conduct a count of unsheltered homeless persons every other year (odd numbered years).

²⁶⁸ *Point-In-Time Count (PIT) Reports*, <https://www.thn.org/texas-balance-state-continuum-care/data/pit-count-and-hic/#pit-information>.

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² Theresa Clift, *What could help Sacramento reduce homelessness? Here's what's being done elsewhere*, The Sacramento Bee (July 13, 2019), <https://www.sacbee.com/news/local/homeless/article227740854.html>.

count data quickly becomes outdated and fails to capture the seasonality of homelessness or the incidence of short-term or episodic homelessness. Despite these known limitations, the methodologies for conducting these counts have seen little change over the years.

Despite a growing public and legislative focus on local homelessness response, systemic factors continue to exacerbate the problem. The ongoing shortage of affordable housing, rising rental costs, and economic instability and inflation, continue to contribute to homelessness across the state. Furthermore, a lack of cohesive coordination between state agencies, local governments, and nonprofit organizations has led to fragmented service delivery, making it difficult to develop and implement consistent, statewide solutions.

Municipal strategies addressing homelessness vary across the state, with some cities implementing innovative programs and others facing persistent challenges. For instance, Haven for Hope in San Antonio has emerged as a national model for addressing homelessness. Since its establishment in 2010, Haven for Hope has partnered with over 40 organizations to deliver comprehensive services, resulting in a \$5.6 billion economic impact. Similarly, Houston's housing-first approach has seen a 64% reduction in homelessness since 2011, while Austin's Housing-Focused Encampment Assistance Link (HEAL) program has helped close 26 encampments.

B. Discussion

1. Approaches to Addressing Homelessness

Different schools of thought have emerged over time, each with its own approach to addressing homelessness:

a) The “Housing First” Model

The core principle to the “Housing First” model is to provide stable, permanent housing to people experiencing homelessness without preconditions, such as sobriety or employment. The belief is that once a person has stable housing, they can better address other issues like mental health, addiction, or unemployment. This has been the predominant approach to combatting homelessness in recent years.

Advocates contend that this model leads to long-term cost savings by reducing emergency services, hospitalizations, and incarceration. However, this model does not address the underlying causes of homelessness for everyone and requires substantial initial investment.

b) The “Continuum of Care” Model

The Continuum of Care system provides a range of services, from emergency shelter to transitional housing and permanent supportive housing, to address varying levels of need. This approach acknowledges that not all individuals are ready for permanent housing right away and provides a gradual pathway out of homelessness. It can, however, be more complex to implement and may require more coordination among service providers, which can lead to fragmented services if those providers are not working together.

c) The “Emergency Shelter” Model

This model focuses on providing temporary and immediate relief to people experiencing homelessness, such as shelters with basic necessities (e.g., food, clothing, showers). Such a service is necessary as it provides quick relief and prevents further suffering, especially during extreme weather conditions. However, emergency shelters are not a permanent solution and can become overcrowded. They often fail to address the long-term needs of individuals.

d) The “Prevention and Intervention” Model

Prevention and Intervention centers focus on preventing homelessness before it happens and intervening early when a risk is detected (e.g., eviction prevention, legal aid, and emergency financial assistance). Advocates argue the number of people who become homeless in the first place, which can lead to a reduction in the overall homeless population. Prevention programs may not be as visible as emergency services, and funding can be inconsistent or limited. This model also does not address the needs of those already experiencing homelessness, and should therefore be used in conjunction with other models.

2. Haven for Hope – San Antonio

Haven for Hope in San Antonio, Texas is widely recognized as one of the most effective examples of the Continuum of Care approach to addressing homelessness. Established in 2010, it has transformed the way services are delivered to individuals experiencing homelessness by providing an integrated and comprehensive system of care under one roof.

The creation of Haven for Hope was a response to a critical and growing need in Bexar County. In 2006, business and civic leader Bill Greehey identified the significant challenges posed by rising homelessness and worked with city leaders to establish an independent 501(c)3 nonprofit organization. After conducting extensive research over 18 months on more than 200 homeless shelters nationwide, Mr. Greehey and his team developed Haven for Hope’s unique “one-stop” service model. Prior to its creation, services for the homeless population in San Antonio were fragmented, geographically distant, and administratively disconnected. These limitations often made it difficult for individuals to access resources due to unreliable transportation, excessive paperwork duplication, and other bureaucratic barriers. By consolidating service providers and fostering collaboration, Haven for Hope removed these challenges and created a more accessible, efficient, and streamlined system of care.²⁷³

Haven for Hope operates on a two-campus model to address both immediate and long-term needs. The South Campus serves as a low-barrier emergency shelter where individuals are offered safe, indoor congregate sleeping arrangements. This campus does not require identification for entry and allows individuals to remain active in addiction, provided drugs or alcohol are not brought onto the premises. Clients at the South Campus have access to ID recovery services, housing support, medical care, mental health counseling, substance-use counseling, dental care, eye care, and other critical services. By contrast, the North Campus, known as the Transformational

²⁷³ *History*, Haven for Hope, <https://www.havenforhope.org/about/history/>.

Campus, is designed for individuals and families committed to longer-term stability. Entry requirements include residency in Bexar County, identification, sobriety, and active engagement in housing and income plans.²⁷⁴

Since its inception, Haven for Hope has produced measurable results for the community. In Fiscal Year 2023, Haven for Hope served a total of 9,457 individuals, the highest number since the organization opened its doors in 2010. Of this total, 6,236 individuals accessed low-barrier shelter services at the South Campus, where the average length of stay was 51 days. Meanwhile, 3,221 individuals, including 193 veterans and 1,085 children, received comprehensive support on the Transformational Campus, with an average length of stay of 122 days. In addition to these overall results, Haven for Hope provided targeted assistance to families, veterans, and young adults. In FY 2023, the Family Residential Center and Family Emergency Services Program served 722 families, a marked increase over previous years, largely attributed to inflation, rising housing costs, and the discontinuation of eviction moratoriums. Additionally, 789 young adults between the ages of 18 and 24 received specialized programming, a significant increase of 31 percent compared to the previous year.²⁷⁵

Haven for Hope's success has been widely credited with a notable decline in chronic homelessness in San Antonio.²⁷⁶ By reducing reliance on emergency services, public hospitals, and the criminal justice system, Haven for Hope has generated significant cost savings for the community while helping individuals achieve stability and self-sufficiency. In Fiscal Year 2022, nearly 80 percent of clients exiting Haven's programs did not return to homelessness services the following year, demonstrating the effectiveness of its long-term support.

3. The Way Home – Houston

Houston serves as both an outlier and an example of the Housing First model's success. Since adopting the approach in 2011, the city has reduced chronic homelessness by 68% and overall homelessness by 63%.²⁷⁷ The key to this success is Houston's participation in a Continuum of Care (CoC) initiative known as The Way Home.²⁷⁸ This regional entity receives federal funds and coordinates a homelessness response, led by the Coalition for the Homeless of Houston/Harris County. The city's initial focus on housing homeless veterans expanded to encompass the broader chronically homeless population, leveraging pilot initiatives and substantial federal investments, including \$165 million through the Community-wide COVID-19 Housing Program.

Houston's outcomes stand in contrast to California and Utah, where Housing First policies have not mitigated rising homelessness rates. Analysts suggest that Houston's success is attributed to several factors²⁷⁹:

²⁷⁴ *Campus*, Haven for Hope, <https://www.havenforhope.org/about/services/>.

²⁷⁵ *Haven's Impact Report for FY 2023*, Haven for Hope, <https://www.havenforhope.org/newsroom/7208/>.

²⁷⁶ Derek Fleming, *Haven for Hope CEO Explains Nonprofit's Success*, The Dallas Express (June 2, 2024), <https://dallasexpress.com/state/haven-for-hope-ceo-explains-nonprofits-success/>.

²⁷⁷ Vanessa Brown Calder and Jordan Gygi, *In Houston, Housing Affordability Helps Reduce Homelessness*, CATO Institute (Feb. 15, 2023), <https://www.cato.org/blog/houstons-affordability-helps-reduce-homelessness>.

²⁷⁸ *About Us*, The Way Home, <https://www.thewayhomehouston.org/>.

²⁷⁹ *In Houston, Housing Affordability Helps Reduce Homelessness*, <https://www.cato.org/blog/houstons-affordability-helps-reduce-homelessness>.

- **Effective Coordination:** Houston’s approach is implemented over a single CoC, allowing for streamlined collaboration among public and private stakeholders. In contrast, California’s fragmented system involves 44 distinct CoCs, complicating coordination.
- **Compassionate Enforcement:** Policies prohibiting public camping and discouraging panhandling have improved public spaces while ensuring affected individuals have access to permanent supportive housing or housing vouchers.
- **Affordable Housing Supply:** Houston’s average home values are significantly lower than those in California and Utah, making it easier to build or buy housing units. This affordability reduces costs. Houston spends between \$17,000 and \$19,000 to house an individual annually, compared to \$40,000 to \$47,000 in San Francisco.²⁸⁰

C. Interim Hearing

On October 15, 2024, the Senate Committee on State Affairs held an interim hearing covering the homelessness charge provided by the Lieutenant Governor. Invited testimony included the Cities of San Antonio, Austin, Houston, and Dallas, Haven for Hope, The Other Ones Foundation, The Harris Center, Refuge for Renewal, Endeavors and Pallet Shelter.

1. City of San Antonio

Melody Woosley, Human Services Director for the City of San Antonio, discussed the City of San Antonio’s dedication to supporting the efforts of Haven for Hope, in part through investing 23 million dollars in capital funding to the organization, and 121 million total in operations to both Haven for Hope and campus partner agencies since 2010. Woosley said Haven for Hope is central to homelessness response efforts, and that in collaboration with 42 other organizations in the city, 4,500 individuals have been moved either from the street to shelters, or from shelters to long term housing. According to Woosley, the City of San Antonio, in partnership with the San Antonio Police Department, has also engaged in strong clean up efforts to remove health and safety hazards from public spaces. These efforts have successfully removed 2,400 tons of trash and debris from city right of ways in the year 2023.

Woosley continued, outlining for the committee that homelessness is expensive, and the best way to reduce homelessness is through prevention efforts. She said that currently 27% of San Antonio’s homeless population is not accessing shelters, which equates to about 900 individuals who remain on San Antonio streets. The city is also seeing an upward trend in families experiencing homelessness. The city believes the most effective courses of action would include increased funds, enhancement of mental health and crisis response, expansion of permanent housing efforts, improved data sharing coordination, and streamlining of access to identification recovery.

2. Haven for Hope

Kim Jefferies, President and Chief Executive Officer of Haven of Hope of Bexar County, told the committee that Haven for Hope current operates as largest campus, founded in 2010, that works end homelessness by empower individuals and families to transform their lives. On a given day, Haven for Hope sleeps 1,655 individuals, and they assisted 9,457 individuals experiencing

²⁸⁰ *Id.*

homelessness in 2023, which equates to 85% of San Antonio’s homeless population. She said there are several key elements to the success of Haven for Hope, the first being the scale and geography of the organization. The Haven for Hope campus sits on 22 acres, with 400,000 square feet of interior space in an area where the majority of the homeless population already existed.

She stated that another key element is the barriers to entry and access to services they provide, which include substance use and detox treatments, sober living, behavioral health treatment, housing, workforce development, education, medical services, and much more. Haven for Hope operates on housing first principles, and employs trauma informed practices, person centered services and incorporates those with lived trauma experiences in their treatment methods. Jefferies said they are also Lead Agency for the Homelessness Management Information System, which helps organizations anticipate homelessness trends. Haven for Hope provides an economic benefit to the City of San Antonio, with 5.6 billion dollars in net benefit to the community. Individuals who come to Haven for Hope typically stay an average of 4 months, and those who come have an 80% better chance of housing stability than those who do not.

3. City of Austin

Gary Pollack, who represented the City of Austin, said that the City is intent on providing opportunities to engage with resources dedicated to preventing and ending homelessness in strategic locations around the community. They intend to do this through resources that are place based, decentralized, and over the phone. One decentralized initiative they have is the Homeless Outreach Street Team (HOST), which brings together various independent and city organizations in Austin, connects them to unhoused individuals, and in turn connects those individuals to necessary services. HOST has worked to address public safety concerns, and successfully meets individuals where they are in order to provide them effective care.

Pollack said the City of Austin has also worked through their Housing-focused Encampment Assistance Link Program (HEAL Initiative) to close 26 encampments in the city. They also actively launch diversion programs that provide support and financial assistance to those who are nearly or newly homeless. In 2023, 3,000 individuals effectively ended their homelessness, and by the end of 2026 more than 1,000 supportive housing units and site-based properties will open.

He recommended increased funding for the Homeless Housing and Services Program (HHSP) and a revision of state laws that is dedicated to increasing mental health commitment and emergency detention opportunities while expanding mental health capacity across the state. He said the state should support expansion of permanent supportive housing, and promote enhanced data sharing between homeless response systems, law enforcement, and healthcare systems. In addition, Pollack recommended the process for individuals experiencing homelessness to obtain personal identification be simplified, and that funding be dedicated specifically to family-focused shelters in response to the rising rates of families experiencing homelessness.

4. The Other Ones Foundation

Chris Baker, Founder and Executive Director of The Other Ones Foundation (TOOF), discussed the organization’s dedication to providing workforce focused initiatives to individuals experiencing homelessness as a part of their program. Founded in 2017, TOOF offers supportive services, shelter, and low barrier work opportunities to individuals through the Esperanza Community in Austin, which they operate in partnership with the Texas Department of

Transportation (TXDOT). The Esperanza community features cabins, laundry facilities, a community center, a medical clinic, and a food pantry in addition to case management, housing navigation, and peer recovery services alongside vocational rehabilitation initiatives and whole human healthcare. Baker highlighted his belief that state organizations can improve homelessness in their respective communities by offering a variety of intervention types for individuals experiencing homelessness and increase funding for organizations dedicated to addressing this topic.

5. City of Houston

Mike Nichols, Director of the Housing and Community Development Department for the City of Houston, discussed the success the City of Houston has had in reducing homelessness. Since 2011 32,000 individuals experiencing homelessness have been housed, which entails moving those individuals into an apartment with a lease in their name and professional case management services. Nichols said that Houston Mayor John Whitmire has assembled a team to develop solutions to homelessness. He outlined how Houston has made progress on this issue but that increased funding is needed for the city to build on its successes. He said enhanced mental health and crisis response and more psychiatric beds are urgently needed, in addition to more affordable housing.

6. The Harris Center

Wayne Young, Chief Executive Officer of The Harris Center, said the center supports individuals who are experiencing a combination of mental illness crises, criminal justice involvement, and homelessness. He said that the Harris Center's campus, which had 2,600 employees serving 9,600 residents of Harris County in 2023, has 108 beds, receives funding from federal, state, city, and county governments. Young explained to the committee that individuals with mental illnesses represent three fourths of criminal justice cases, and they often do not have another place to go. In 6 years the Harris Center has redirected 12,000 individuals from jail for low violence misdemeanor charges such as trespassing. He said that the Harris Center patients require assistance to prepare them for housing and discussed the Hospital to Home program, which provides temporary beds for individuals leaving psychiatric hospitals and supports transitions to permanent housing

7. City of Dallas

Jesse Moreno, Councilmember for the City of Dallas, outlined the approaches the City is taking in order to improve homelessness. These approaches include collaborating with the CoC and pairing supportive services with rapid rehousing and permanent supportive housing. The City of Dallas also employs the Street to Homeless initiative, which successfully housed 107 individuals in the downtown area in its first 100 days of operation, and uses data driven strategies to identify priorities and create rapid approaches to solve them. The City Action Strike Team (CAST) is a collaborative effort used to enhance the quality of life and safety across the city by tackling the issue with multiple key city departments.

8. Refuge for Renewal

Tyler Arbogast, the Executive Director for Refuge for Renewal, began by stating the mission of the organization; to materially reduce the number of individuals experiencing homelessness by providing a wide breadth of services in a single location. He told the committee that statewide

homelessness can be greatly attributed to the fragmented and inconsistent approaches between different cities. Arbogast said that the most effective solution would be using a streamlined, cohesive approach in all major cities similar to the Haven for Hope model, and called for the state to allow funding for cities in order to do so. He also said that moving shelters away from downtown areas would be productive in order to stop overwhelming existing resources located in downtown area, and make receiving assistance easier for individuals experiencing homelessness.

9. Endeavors

Melissa Escamilla, the Program Director of Veteran Supportive Services for Endeavors, discussed the work of Endeavors for the homeless. She said that her organization took on a nontraditional supportive services role following Hurricane Harvey to ensure veterans were housed. Endeavors' Veteran Supportive Services program serves over 1,500 veterans and their families. She stated that veterans have difficulty affording sober living homes and facilities, obtaining identity and service-related documentation, securing transportation and affordable housing, and accessing mental health resources. She said that Haven for Hope should be used as a model for helping veterans to live healthy and independent lives.

Escamilla also said that programs aiming to combat homelessness need to fit the unique needs of each community and that increased communication between communities and across state lines on effective homelessness solutions is vital. She recommended increased funding for homelessness prevention and said that expanding the Veterans Treatment Court would reduce veteran homelessness. Escamilla said that increased funding for affordable housing and for homelessness prevention, such as access to resources for mental health, would be the most effective way for Texas to combat homelessness.

10. Pallet Shelter

Amy King, Chief Executive Officer of Pallet Shelter, talked about the efforts of Pallet to expand affordable housing options. She said that over 70 percent of Pallet's workforce consists of individuals transitioning from homelessness, addiction recovery programs, or the justice system. King informed the committee that Pallet partners with Zillow to identify underutilized land and works with communities to select optimal locations for shelters. Each shelter unit costs between \$18,000 and \$25,000, lasts up to 20 years, and is placed in a community setting, made possible by funding that typically comes from federal agencies and local philanthropy groups. She continued, saying that the rent Pallet charges to residents varies but that most sites charge no rent.

She said that combatting homelessness is not merely a housing issue and that it requires significant employment opportunities and recovery resources, and that educating veterans on the many resources available to them is crucial to ensuring that individuals can access support. King said that, in her experience, traumatic events often lead individuals to become unhoused and that substance abuse is often a coping mechanism for trauma, not a cause of it. She said that an economic or relationship crisis experienced by someone who has suffered childhood trauma often leads to homelessness.

D. Recommendations

The Committee received numerous recommendations from witnesses, reflecting a variety of approaches to addressing homelessness in Texas. While the Committee determined that a one-size-fits-all model would not be comprehensive for a state as large as Texas, these recommendations provide a balanced, multi-faceted approach to addressing homelessness in Texas, ensuring that prevention, intervention, housing solutions, and supportive services work cohesively to reduce homelessness and promote long-term stability.

The success of Haven for Hope in San Antonio highlights the effectiveness of integrated service campuses that address both immediate and long-term needs. To replicate this success the Legislature should consider supporting the development of centralized campuses modeled after Haven for Hope. These campuses should integrate emergency shelter, healthcare, mental health and substance abuse services, workforce development, and permanent housing options. There should also be a requirement for cities receiving support for such programs to use the Homeless Management Information Systems (HMIS) for better data sharing, service tracking, and anticipatory planning.

Improved data sharing between homelessness response systems, healthcare providers, and law enforcement should be promoted to optimize resource allocation and trend analysis.

Given the rising rates of family homelessness, the Legislature should promote family-focused shelters and support services, such as educational assistance, and family reunification programs. Development of site-based housing solutions specifically for families should also be encouraged.

To address the unique challenges faced by veterans, the Legislature should expand Veterans Treatment Courts and continue to support veteran-specific supportive housing, mental health services, and workforce programs.

In addition, the Legislature should enhance enforcement efforts, such as removing unsafe encampments and ensuring individuals are connected to mental health and support services.

CHARGE NO. 14

Election Audit Reports: *Evaluate the Secretary of State's election audit reports. Make recommendations to secure our elections and ensure counties follow the law.*

A. Background

Confidence in the outcomes of elections remains low.²⁸¹ S.B. 1, passed in the 87th Legislative Session, contained a variety of election code updates, but also contained a provision requiring the Secretary of State to perform robust audits of the election process.²⁸² Texas was a leader in this approach. While other provisions in the Election Code, such as the partial manual count²⁸³ and the risk limiting audit program,²⁸⁴ check the accuracy of the vote count, detailed procedural audits ensure that election officials are following the procedures and edicts set forth in the Texas Election Code. The current statute requires four counties, two over and two under 300,000 in population, be selected for audit every two years.²⁸⁵

B. Interim Hearing

On October 16, 2024, the Senate Committee on State Affairs held an interim hearing covering the election audit reports charge. Invited testimony consisted of the Secretary of State.

Christina Adkins, Elections Director of the Secretary of State, Adkins explained that S.B. 1 from the 87th Legislature, required the Office of the Secretary of State to audit recent elections in four randomly selected counties. She said that audits found that an area of improvement in all counties concerned the lack of written security plans. She said the audited counties also need more rigorous polling place paperwork completion measures. She described positive findings from the audits, including strong county self-improvement efforts, as well as specific observations for each audited county. She recommended legislation to enforce audit report compliance requirements.

C. Recommendations

The Committee received testimony that the audits are working as intended and have changed the behavior of local elections officials in a positive way. The Committee believes, however, that the audits can be reconfigured in several ways to increase their efficiency and effectiveness.

First, the timing of the audits can be changed. Current law requires a two year look back at elections for audit. The Committee believes that the look back period should be at most a year. The year gained can be used to do a forward look as well where the Secretary can observe an election in real time. This will allow the Secretary to audit procedures that do not contain documentation, including as an example, whether local officials are properly checking the identification of voters.

²⁸¹ *Few Americans Believe 2024 Elections Will be 'Honest and Open,'* Public Affairs Council (Oct. 2023), <https://pac.org/impact/few-americans-believe-2024-elections-will-be-honest-and-open>.

²⁸² Texas Election Code § 127.351.

²⁸³ *Id.* at § 127.201.

²⁸⁴ *Id.* at § 127.302.

²⁸⁵ *Id.* at § 127.351.

Second, the audit statute can be further refined to enumerate the topics that the Secretary must review in every audit. This will help guide the audits and provide the counties with additional information so that they are aware of the scope of the audit.

Finally, the Committee believes that the audit pace can be accelerated. Current law breaks the counties into a large county group and a small county group. There are currently only 18 large counties, so each large county has a reasonable chance of being audited in the near future. The small county group, however, contains 236 counties. Only two are drawn every two years making the possibility of an audit remote. The Committee recommends increasing the frequency of drawing smaller counties or adding additional size brackets to ensure that smaller counties will be audited.

CHARGE NO. 15

Monitoring: *Monitor the implementation of legislation addressed by the Senate Committee on State Affairs passed by the 88th Legislature. Specifically, evaluate the impact of Senate Bill 2284, relating to the sale of distilled spirits to ultimate consumers by the holder of a distiller's and rectifier's permit. Report whether the increased sale of distilled spirits has had a positive impact on economic development and public safety in this industry.*

A. Background

Over the last decade, the Texas distilled spirits industry has seen tremendous growth.²⁸⁶ In 2008, there were eight distillers operating in the state.²⁸⁷ In 2013, distilleries were allowed to commence bottle sales.²⁸⁸ Today, over 200 distilleries hold active distiller's and rectifier's permits in Texas. Texas is currently the number one state in the country for producing vodka and is third in production of whiskey.²⁸⁹

In response to the growth of the industry, S.B. 2284 was enacted in the 88th Regular Session to allow a Texas distiller to sell four 750 milliliter bottles or the equivalent of each of the distiller's product to the ultimate consumer for off premise consumption within a 30-day period.²⁹⁰ Prior to the passage of the bill, a distiller could not sell more than two bottles of distilled spirits per person per thirty days for off-premise consumption from a distillery.²⁹¹

B. Impacts of S.B. 2284

After the passage of S.B. 2284, the Texas Distilled Spirits Association surveyed their membership on the impact of the legislation with varied results.²⁹² Overall, 60% of their members said that they have seen an increase in the number of bottles sold from September 1, 2023 to September 1, 2024.²⁹³ This change equated to a 31% increase in bottle sales and 26% revenue increase for Texas distillers.²⁹⁴ Distillers, however, anticipate a further increase in sales as a result of the legislation in the 2024 holiday season.

C. Interim Hearing

On October 16, 2024, the Senate Committee on State Affairs held an interim hearing covering the monitoring charge provided by the Lieutenant Governor. Invited testimony included the Texas Alcoholic Beverage Commission, Texas Distilled Spirits Association, and Texas Tail Distillery.

1. Texas Alcoholic Beverage Commission

²⁸⁶ Tex. S.B. 2284, Original Author's/ Sponsor's Statement of Intent, 88th Leg., R.S. (2023).

²⁸⁷ *Written testimony of John Evans on behalf of the Texas Distilled Spirits Association for Monitoring S.B. 2284 Charge: Hearing Before the S. Comm. on State Affairs*, 2024 Leg., 88th Interim (Oct. 16, 2024).

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ Tex. S.B. 2284, 88th Leg., R.S. (2023).

²⁹¹ Tex. S.B. 2284, Original Author's/ Sponsor's Statement of Intent, 88th Leg., R.S. (2023).

²⁹² *Written testimony of John Evans* (Oct. 16, 2024).

²⁹³ *Id.*

²⁹⁴ *Id.*

Thomas Graham, executive director of the Texas Alcoholic Beverage Commission (TABC), said that TABC collects taxes and receives monthly reports from distilleries. He said businesses approve of S.B. 2284, and that no compliance or public safety issues have arisen. Graham said sales are down over the last couple of years after the sales spike during the pandemic. He expects numbers to stabilize and show steady growth.

2. Texas Distilled Spirits Association

John Evans, member of the Texas Distilled Spirits Association, said he has seen the benefits of S.B. 2284 at his distillery, Wilson Valley Mercantile, and at distilleries owned by other TDSA members. He said that he expects a 10 percent increase in sales by the end of the year at Wilson Valley Mercantile, and a majority of TDSA members saw increases in bottle sales in the year since the bill took effect. He told committee all distilleries have seen increased revenue and that larger distilleries have seen the most growth.

3. Nick Droege

Nick Droege testified that the passage of bill has helped his distillery, Texas Tail Distillery in Galveston. He said that in the last year, Galveston was hit by hurricanes and suffered economic troubles and that he believes the bill has helped small businesses like his to stay afloat through such difficulties.

D. Recommendations

The Legislature should continue to monitor the growing positive economic benefits to the distilled spirits business and the impacts of increasing permitted bottle sales.

APPENDIX

Written testimony from the Committee's interim hearings is available upon request.