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To the members of the House Select Committee on Constitutional Rights & Remedies.
Via hand delivery.

August 23, 2021

Re: SB 1, “election integrity” - Opposition Testimony by Public Citizen

Dear Chairman Ashby and members of the committee:

Public Citizen appreciates the opportunity to testify against SB, relating to election integrity and security, including by preventing fraud in the conduct of elections in this state; increasing criminal penalties; creating criminal offenses; providing civil penalties.

The Human Cost of Voter Suppression.

We oppose this legislation because we believe that it will have the effect—intended or not—of suppressing votes. This effect will fall disproportionately on black and brown people, Native Americans, voters with disabilities, veterans and members of the military, non-native English speakers, rural voters and low-income Texans — communities who for generations have been the victims of systematic disenfranchisement.

Right now in Texas and across the nation there is a systematic effort to undermine confidence in elections. It has played out in state legislatures ever since key portions of the Voting Rights Act were overturned by the Supreme Court in *Shelby County v. Holder*. It plays a role in the perpetuation of the “Big Lie” by former president Donald Trump. It is part of a deliberate, concentrated effort to subvert democracy by controlling who has access to the polls. This trend must be reversed in Texas and across the United States. To that end we are also advocating in Congress passage of HR 1 the For the People Act, and HR 4, the John R. Lewis Voting Rights Advancement Act.

There are real human costs to voter suppression. Crystal Mason and Hervis Rogers—both of whom are black—were convicted and charged, respectively, with violating elections laws. They face penalties that are disproportionate to their crimes, which occurred without intent. We can’t help but see them as victims of a propaganda effort to undermine democracy. Their treatment is shameful. Their prosecution by the office of Attorney General Ken Paxton is emblematic of the two-tiered justice system at work in America.¹

¹ See my recent commentary in the San Antonio Express News, “Paxton exemplifies two-tiered justice system” available at <https://www.expressnews.com/opinion/commentary/article/Commentary-Paxton-exemplifies-two-tiered-justice-16340789.php>.



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We urge you not to pass this legislation. Testimony by the AG's office in previous hearings on this legislation has presented the numbers. Voter fraud is vanishingly rare. The examples of voter fraud being prosecuted by the AG's office in the last decade number in the few hundreds, the individuals being prosecuted in the tens. *There has never been a conviction of an intentional case of voter fraud in Texas.* More than 11 million Texans voted in the 2020 election. Even unintentional examples of voter fraud are miniscule in comparison to the number of votes cast. The best way to ensure a free and fair election is to increase access to the polls. The more people vote, the more confidence we can have that our election upheld the principles of democracy.

Instead, we have a bill that dabbles in the minutiae of procedure with obscure aims. In that spirit we offer the following substantive suggestions.

Improvements to Vote by Mail.

During the floor debate, the Senate made some positive changes to the vote by mail process. These include the opportunity to discover and cure certain defects via the online VBM tracker. However, there are still issues with vote by mail. Specifically:

- The opportunity to cure issues with vote by mail ballots is not mandatory for all counties. Legislators have stated their intent that this bill provide for consistent administration of elections across the state. But under SB 1 as written counties will get to choose whether voters have notice or opportunity to cure problems with signatures, ID numbers, or other issues.
- Counties do not have a proactive method to notify people who applied to vote by mail when there are issues with their ID number—either that it was not included or that it cannot be used to successfully identify them. The online VBM tracker will post voter ID errors online, and voters do have the ability to correct their ID numbers online. But there is no mechanism for the county to notify the voter of the problem in the first place. There is a process to notify voters when the marked ballot itself has an ID number issue, but there is no such process for VBM applications.
- During the Senate floor debate, lawmakers unanimously supported Floor Amendment 6, which gives voters the opportunity to “add or correct” their ID numbers via the online VBM tracker. This was a good amendment and an indication of the value placed on giving voters the ability to remotely cure defects. Unfortunately no such remote option is available when the defect is related to the signature on the VBM ballot. An overwhelming number of mail-in ballots that are subject to rejection are due to issues with the signature. And yet voters have no remote option to cure this issue such as via the online VBM tracker, by email, fax, or phone.



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The Varying Treatment of Election Officers and Poll Watchers.

Generally speaking, the effect of SB 1 is to lard election officers with procedure and penalties while expanding the opportunity for poll watchers to interfere in elections. There are other advocacy organizations, such as the Texas Civil Rights Project, that have gone into more detail about these provisions in SB 1. We will make one comment on their overall effect.

In previous hearings on similar legislation, we have heard testimony from people who say that they do not feel intimidated by poll watchers and cannot imagine why anyone would. This testimony invariably comes from older, white voters.

On the other hand, we have heard testimony from the Dean of the House, Rep. Senfronia Thompson, who shared a specific example in which she was the victim of intimidation by a poll watcher. Rep. Thompson plainly understands election administration as well as nearly anyone in Texas—she has participated as a candidate for fifty years. Her experience shows something that many proponents of this bill cannot see: its effect on minority voters.

Rep. Thompson is not one to shrink in the face of intimidation. But how many voters might? Are we aware of the effect that emboldened poll watchers (and chastened elections officers) will have on them?

The Pandemic as Context for Voter Access.

The 2020 election occurred under unprecedented circumstances—the COVID-19 pandemic. As the pandemic continues with renewed ferocity, we must take extreme care to provide everyone with safe access to the polls. This includes people who are ill, people who are contagious, people who are immunocompromised, and those such as the disabled who face other health-related obstacles to voting. We should also take lessons from the pandemic about how ballot access can be expanded, not restricted.

Drive-through voting proved a safe and popular option for voters in Harris County. A federal judge has already ruled that the 127,000 ballots cast by drive-through voters were valid.² And yet SB 1 has inexplicably banned drive-through voting. Extended voting hours were also a popular option. And though proponents of this legislation claim that it has not restricted voting hours, in fact the law never previously limited voting hours. SB 1 limits voting hours during early voting and bans overnight voting.

Both drive through voting and overnight voting were disproportionately used by minority voters. Targeting these methods disproportionately impacts minority voters. Unintended or not, these are the fact. As to the question of intent, the history of the disenfranchisement of minority voters provides a guide.

² See <https://www.texastribune.org/2020/11/02/texas-drive-thru-votes-harris-county/>.



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Both this context and the measures necessary to conduct elections safely during the pandemic weigh in favor of expanding access to the polls. Furthermore, it is the stated intent of proponents of this legislation that everyone in Texas have an equal opportunity to vote. There are millions of voters in Harris County. Some counties have only a few thousand voters. Equal access will necessarily mean more opportunities to vote in more populous counties—more polling locations, more hours, and more access to methods such as early voting, vote by mail, and drive through voting.

Conclusion: despite a few positive measures, on balance we oppose SB 1.

There are a few things in this legislation we can support. These include:

- Allowing voters to update their voter registration electronically when they move counties.
- Recent amendments to provide for notice and opportunity to cure defects in vote by mail ballots.
- Explicitly extending to early voting the Election Day rule that voters who are in line at closing time can vote

Still, the overwhelming impact of this bill will be to suppress votes. That effect will disproportionately fall on poor and minority voters who have been the target of disenfranchisement for generations.

For these reasons we oppose SB 1 and urge you not to pass it.

Thank you for the opportunity to provide this testimony, if you wish to discuss our position further, I can be reached by email at ashelley@citizen.org or by phone at 512-477-1155.

Respectfully,

Adrian Shelley
Texas Office Director

CC: Rep. Senfronia Thompson, Rep. John H. Bucy III, Rep. Travis Clardy, Rep. Charlie Geren, Rep. Jacey Jetton, Rep. Ann Johnson, Rep. Stephanie Klick, Rep. Brooks Landgraf, Rep. Oscar Longoria, Rep. J. M. Lozano, Rep. Joe Moody, Rep. Victoria Neave, Rep. Matt Shaheen, Rep. James White