



Testimony on HB 3424,

By: James Slattery, Senior Staff Attorney, Texas Civil Rights Project

Texas House Elections Committee, May 4, 2021

Chair Cain, Vice Chair González, and Members of the House Elections Committee,

I am testifying in opposition to HB 3424. Section 1 would take the already existing criminal offense of “organized election fraud activity” and allow the state’s top prosecutor to now sue defendants in civil court for the same offense. By doing so, it would allow the Attorney General to use the civil court system to do an end run around the procedural safeguards that exist in the criminal justice system and protect defendants from wrongful judgments and governmental abuse of power.

The new civil cause of action would have the exact same elements as the criminal offense. But unlike the criminal statute where a prosecutor must prove the elements of the offense beyond a reasonable doubt, HB 3424 would allow the Attorney General to obtain punishment of defendants for the same conduct by satisfying only the sharply lower standard of “a preponderance of the evidence.” That punishment is itself quasi-criminal in nature: a \$1,000 penalty for “each” offense that is clearly intended to quickly drive defendants into bankruptcy.

Further, unlike in criminal cases where a defendant has the right to counsel even if they cannot afford one, that right does not exist in civil proceedings. Having defendants face the power of the state in court alone without a lawyer makes it substantially more likely that the Attorney General will obtain an adverse judgment even if the defendant did not in fact commit the offense. And such a prospect will give enormous leverage to the Attorney General to squeeze settlement agreements out of vulnerable and innocent defendants just to make the case go away and avoid financial ruin.

The safeguards of our criminal justice system exist to balance the demands of justice with the need to protect individuals from the arbitrary exercise of governmental power. We should not give the Attorney General the authority to sidestep those guardrails merely because they may be inconvenient. We therefore urge the Committee not to report this bill favorably.