



Testimony

Improving Local Ordinance Integrity

Testimony before the Senate Committee on Intergovernmental Relations

by James Quintero, Director

Chairman Lucio and Members of the Committee:

My name is James Quintero and I am the director of the Center for Local Governance at the Texas Public Policy Foundation, a free-market research institute based in Austin, Texas. I am here to testify in support of Senate Bill 488.

As filed, SB 488 would improve the accuracy and integrity of the local election process by requiring ballot propositions to be submitted with definiteness and certainty; adding important safeguards that allow for an objective review of the language; standardizing the form and content of a petition; removing overly broad requirements on petitioners; and restricting home-rule municipalities from invalidating petitions under certain circumstances.

These commonsense reforms will do much to bring uniformity and fairness to local elections and give Texans greater confidence in the overall process—something that may be lacking given the recent spate problems arising from muddy language and missing features.

MUDDY LANGUAGE

City of Austin, Ridesharing—May 2016

In May 2016, the city of Austin asked voters to decide on enacting more stringent ridesharing regulations involving fingerprint background checks, vehicle inspections, and emblems on cars, to name a few. Setting aside the merits of the city's ridesharing regulations, the proposition itself is problematic. Here is how it read:

Shall the City Code be amended to repeal City Ordinance No. 202151217-075 relating to Transportation Network Companies; and replace with an ordinance that would repeal and prohibit required fingerprinting, repeal the requirement to identify the vehicle with a distinctive emblem, repeal the prohibition against loading and unloading passengers in a travel lane, and require other regulations for Transportation Network Companies?

While voters ultimately approved the proposition (55.8 percent vs. 44.2 percent), many charged the city with putting forward confusing ballot language that did not properly present the question to the public. An objective reading of the proposition supports that position.

City of Houston, HERO—November 2015

In response to the enactment of the Houston Equal Rights Ordinance (HERO), citizens mobilized and collected enough signatures, or so they thought, to petition for its repeal. Although the city secretary determined that the petitioners had obtained enough signatures, an independent review by the city attorney, who was appointed by the mayor, concluded that a large portion of the signatures were void.

This set of events initiated judicial proceedings which eventually led to the Texas Supreme Court ordering the Houston City Council to either repeal the HERO or put the measure up for a popular vote. The council chose the latter option.

Prior to the election contest however, controversy erupted over the proposed language that was to be submitted to Houstonians. The language, as approved by the council, read:

[Original language] Shall the City of Houston repeal the Houston Equal Rights Ordinance, Ord. No. 2014-530 which prohibits discrimination in city employment and city services, city contracts, public accommodations, private employment, and housing based on an individual's sex, race, color, ethnicity, national origin, age, familial status, marital status, military status, religion, disability, sexual orientation, genetic information, gender identity or pregnancy?

The problem with the council's proposed language is that it ran afoul of the city's own charter. Section VII-b, Section 3 of the city charter states that if an ordinance is challenged by petition, "the council shall immediately reconsider such ordinance or resolution and, if it does not entirely repeal the same, shall submit it to popular vote at the next city general election, or the council may, in its discretion, call a special election for that purpose; and **such ordinance or resolution shall not take effect unless a majority of the qualified voters voting thereon at such election shall vote in favor thereof**" (emphasis added).

While the ballot language should have asked voters to decide on enacting the proposition, it instead asked voters to say "yes" or "no" to repealing the measure—something that was not consistent with the provisions of its charter.

After the Texas Supreme Court reviewed the language, it ordered the city to revise the proposition so that it put forward the question in a manner that was FOR or AGAINST the enactment of the ordinance, not its repeal. Revised ballot language was required of the city, eventually being submitted to voters as follows:

[Revised Language] "Proposition 1: [Relating to the Houston Equal Rights Ordinance.] Are you in favor of the Houston Equal Rights Ordinance, Ord. No. 2014-530, which prohibits discrimination in city employment and city services, city contracts, public accommodations, private employment, and housing based on an individual's sex, race, color, ethnicity, national origin, age, familial status, marital status, military status, religion, disability, sexual orientation, genetic information, gender identity, or pregnancy?"

City of Houston, Term Limits—November 2015

In November 2015, Houston voters were asked to decide on several propositions, including a measure changing the city's term limit system. As put before voters, the proposition read:

"(Relating to Term Limits for City Elective Office) Shall the City Charter of the City of Houston be amended to reduce the number of terms of elective offices to no more than two terms in the same office and limit the length for all terms of elective office to four years, beginning January 2016, and provide for transition?"

There are several challenges with this language. First, while a voter may read the proposition at face-value to mean that it "limit(s)" terms, the measure instead lengthens them from two-year terms to four-year terms.

Second, the language has been constructed in such a way as to give the appearance of being pro-limits when in fact this is a measure to relax certain restrictions. Even Mayor Annise Parker acknowledged that the language was confusing, stating: "I don't know that they realized that they were giving council members more time in office."

Finally, the ballot language omits an important feature about the ballot proposition—that the initiative would result in the total amount of time a municipal-elected official can serve, increasing to eight or ten years based on certain circumstances.

In response to the uncertainty surrounding this proposition, a lawsuit has been recently filed by a Houston resident who “alleges the city misled voters, because it wasn’t clear that a for-vote meant extending term limits.” The case is currently before the First Court of Appeals.

MISSING FEATURES

City of Houston, Drainage Fee—November 2010

On November 2, 2010, the following ballot language was put before voters in Houston:

“Relating to the Creation of a Dedicated Funding Source to Enhance, Improve and Renew Drainage Systems and Streets. Shall the City Charter of the City of Houston be amended to provide for the enhancement, improvement and ongoing renewal of Houston’s drainage and streets by creating a Dedicated Pay-As-You-Go Fund for Drainage and Streets?”

The problem with this proposed language was that it did not mention a chief feature of the amendment—the widespread drainage fee charges—and thus was misleading to voters. In response to the controversial measure, a group of voters filed an election contest suit, challenging the validity of the proposition. The suit went all the way to the Supreme Court where a decision was rendered that Houston’s ballot language did not meet the common law standard of preserving ballot integrity. The Court found that proposed amendments must be submitted with such definiteness and certainty that voters are not misled. The ballot does not need to reproduce the amendment or mention every detail but must substantially identify the amendment’s purpose, character, and chief features.

In its opinion, the Court’s decision stated: “The city did not adequately describe the chief features—the character and purpose—of the charter amendment on the ballot. By omitting the drainage charges, it failed to substantially submit the measure with such definiteness and certainty that voters would not be misled.”¹

These are just a few high-profile examples of the challenges that exist within the current system, and why legislation is needed to provide important safeguards and remedies.

Thank you for your time. I look forward to your questions. ★

¹ Some parties argued that the city’s charter governs ballot procedures and trumps common law, but the Supreme Court rejected this argument, pointing out that *state* law is actually what defines charter amendment procedures and election contests.

About the Author



James Quintero is the director of the Center for Local Governance at the Texas Public Policy Foundation, one of America's premier conservative think tanks. He's been featured in *The New York Times*, *Forbes*, The Huffington Post, Fox News and Breitbart.

Since joining the Foundation in 2008, Quintero has focused his research efforts on state and local government spending, debt, taxes, financial transparency, annexation, and pension reform.

Prior to joining the Foundation, Quintero was a graduate research assistant at Texas State University, where he worked to educate high school students on financial aid and scholarship opportunities.

He received a bachelor's degree from the University of Texas at Austin and a Masters of Public Administration degree with an emphasis in public finance from Texas State University.

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