



## HB 1038

# Testimony Before the Texas Senate Committee on Intergovernmental Relations

by James Quintero, Director

Mr. Chairman and Members of the Committee:

My name is James Quintero, and I lead the Texas Public Policy Foundation's Think Local Liberty project. Thank you for the opportunity to testify today. I am testifying in support of [House Bill 1038](#).

The House engrossed version of HB 1038 seeks to amend current law to clarify the opt-in election process created under last session's Senate Bill 6.

During the first called special session of the 85th Texas Legislature, lawmakers passed SB 6 or the Texas Annexation Right to Vote Act (TARVA), which brought about the most significant annexation reform seen in many years. Among other things, TARVA prohibits certain cities from annexing property owners who reside in an extraterritorial jurisdiction without their consent. Affected cities are instead required to hold an election on the question of annexation and win approval from the majority before proceeding.

The changes made by TARVA were monumental; however, if the bill had a shortcoming, it was that its effects were limited to only certain geographic regions. It did not protect all Texans against forced annexation.

For the most part, only cities located in counties with populations greater than 500,000 or more are required to ask before annexing under TARVA. Everyone else is still subject to the old system, unless registered voters in the area take proactive steps to come under the law's protections.

Included in SB 6 is a provision that outlines a process to change a Tier 1 county into a Tier 2 county, and thus eliminate the forced annexation procedure. First, at least 10 percent of registered voters in the county must sign a petition requesting an election on the question of becoming a Tier 2 county and submit that material to the county commissioners court. Second, a majority of registered voters must approve becoming a Tier 2 county at a publicly held election.

This opt-in election process has proved to be quite popular. According to [StopForcedAnnexation.com](#), less than a year after the new law went into effect, six counties have already held a successful election to change from a Tier 1 county to a Tier 2 county. Those counties include:

- [Parker County](#) voted 81.1 percent to 18.9 percent in favor of change;
- [Wise County](#) voted 77 percent to 23 percent in favor of change;
- [Johnson County](#) voted 77.5 percent to 22.5 percent in favor of change;
- [Freestone County](#) voted 79.3 percent to 20.7 percent in favor of change;
- [Palo Pinto County](#) voted 75.5 percent to 24.5 percent in favor of change;
- [Atascosa County](#) voted 64.7 percent to 35.3 percent in favor of change.

Further still, another three counties (Ellis, Montague, and Reeves) held elections over the weekend to let voters decide on changing from a Tier 1 county to a Tier 2 county. Here are the unofficial results for 2 of the three counties:

- Ellis County voted in favor of change by a margin of 87.06 percent to 12.94 percent;
- Montague County voted in favor of change by a margin of 91.02 percent to 8.98 percent; and
- Data for Reeves County was unobtainable at the time of writing.

Clearly, the opt-in election process is being utilized, which makes it all the more important that lawmakers clarify the system with legislation like HB 1038. But lawmakers should also consider ways to further improve the system as well.

Here are two recommendations to build on the changes put forward in the bill.

First, we recommend that the petition threshold of 10 percent be reduced to ease the burden on petitioners. This would be of particular assistance to Texans living in rural counties with smaller population sizes, who have greater difficulty reaching the required number of signatures plus a certain overage to act as a buffer. A threshold of 7 percent or less should be considered.

Secondly, the system could be strengthened in such a way so as to better respect the will of voters. Under current law, if a majority of voters reject a municipality's proposed annexation at the ballot box, those same residents could be propositioned on the same question as soon as the "first anniversary of the date [that the municipality adopted] the resolution." A longer cooling off period is warranted to give both parties more time to absorb the results. To achieve this, we recommend adding a provision that requires a "cooling off" period of at least five years from a failed annexation election so that the city cannot repeatedly ask the same question.

Together, these reforms could improve the opt-in election process and ultimately reinforce the importance of a fundamental principle: the consent of the governed. For these reasons, we ask the author to consider our amendments favorably.

Thank you for time, and I look forward to answering any questions that you may have. ★



**James Quintero** is the director of the Think Local Liberty project at the Texas Public Policy Foundation. 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. Quintero received a bachelor's degree from the University of Texas at Austin and an M.P.A. with an emphasis in public finance from Texas State University.

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