



# Testimony

## House Bill 3 Invited Testimony to the Texas House Committee on State Affairs

Mr. Chairman and Members of the Committee:

My name is James Quintero, and I am a policy director at the Texas Public Policy Foundation. Thank you for the opportunity to address the committee today. I am testifying in support of House Bill 3, otherwise known as the Texas Pandemic Response Act (TPRA).

First, allow me to provide some background. The Texas Disaster Act of 1975, codified as [Texas Government Code Chapter 418](#), grants special authority to the governor and certain local officials in times of a declared disaster. It is this temporary authority that enabled officials over the past year to impose a wide variety of rules and restrictions in response to COVID-19. Many of these requirements have been onerous and unreasonable.\*

The broad scope and aggressive application of these emergency disaster powers have been the source of much consternation. Americans enjoy certain fundamental protections, even during times of disaster. And those protections were, in some instances, all but forgotten. Their abandonment spurred one federal court judge to issue an opinion noting that “[there is no pandemic exception to the Constitution of the United States or the Free Exercise Clause of the First Amendment](#).”

The last 12 months have made plain that targeted reforms to Chapter 418 are urgently needed. Policymakers must strive to better balance government power with individual liberty in times of crisis.

The TPRA proposes to shift pandemic policy in a favorable way by tailoring local government emergency powers, creating a limited legislative check on executive authority, and making explicit the protection of key constitutional rights, among other things. My written remarks will examine the act’s most constructive provisions.

### A Focus on Freedom

One subtle but telling change proposed by the TPRA is to fix its sights in a constitutional direction. As drafted, the act aims to make the first of its 10 stated goals the protection and preservation of liberty. The provision states:

*Sec. 418A.002. PURPOSES. The purposes of this chapter are to... (1) protect and preserve individual liberties guaranteed under the United States Constitution and the Texas Constitution.*

By establishing a good and proper focus at the outset, the act provides a firm foundation on which to build the remainder and reminds everyone involved of its chief aim.

### Clarifying State-Local Roles

The TPRA also seeks to clarify the roles and responsibilities of state and local governments. The proposed change comes in response to confusion experienced last year caused by competing state versus local emergency orders. Times of disaster require a unified, single response that coordinates state and local resources.

Briefly expanding upon this point further, during the early days of the pandemic, local governments issued their own disaster declarations separate and apart from the state, often with unique provisions. This patchwork quilt of disaster declarations created uncertainty at a difficult time. As a remedy, the act proposes to make the presiding officer of a political subdivision into a pandemic emergency management director. Further, their role is limited and defined.

\* For examples of unreasonable rules and restrictions, see: [Exposing Overreach: Tarrant County](#); [Exposing Overreach: Harris County](#); and [Austin's Next Power Grab](#).

*Sec. 418A.101. (b) A pandemic emergency management director serves as the governor's designated agent in the administration and supervision of duties under this chapter. A pandemic emergency management director shall execute the duties prescribed by the emergency management plan and carry out the state declaration or executive order.*

By clarifying the intended roles for state and local officials to serve, the TPRA seeks to mitigate confusion in chaotic times and provide for a more unified response.

### Limiting Local Overreach

Local government overreach has been a persistent problem during COVID-19, with city and county officials extending disaster declarations indefinitely; proposing excessive fines and criminal penalties for noncompliance; threatening to commandeer private property; imposing unconstitutional demands on houses of worship; and placing onerous restrictions on certain businesses, such as the requirement that restaurants track customers. More specific examples include:

1. [San Antonio](#) and [Houston](#) used their authority to extend their local disaster declarations indefinitely.
2. [San Antonio](#) and [Austin](#) threatened excessive fines (i.e., \$2,000) for violations while the [City of Laredo](#) imposed criminal penalties for noncompliance of emergency orders.
3. [Tarrant County](#) Judge issued an executive order threatening to commandeer private property.
4. [Austin](#) empowered an unelected bureaucrat to issue emergency orders dictating intimate details about a person's life.

To address these instances of local government overreach, at least within the context of pandemics, the TPRA omits Sec. 418.108(g) of the Government Code,<sup>†</sup> a loosely interpreted provision that enabled a wide range of problematic policies. The exclusion of this provision from Chapter 418A will prevent a recurrence of last year's most egregious violations.

### Preemption Doctrine

The TPRA also makes it unmistakably clear that state authority trumps local rules and regulations during a pandemic. The act does so by including the following provision:

*Sec. 418A.103. PREEMPTION. Any local order or rule issued in response to a state or local state of pandemic disaster is superseded and void to the extent that it is inconsistent with orders, declarations, or proclamations issued by the governor or the Department of State Health Services.*

By explicitly adding this preemption provision, this act solidifies the idea that political subdivisions are arms of the state and ensures that the state's resources are devoted to where they are needed most.

### Second Amendment Protections

Over the past year, emergency orders infringed upon certain aspects of Second Amendment rights. The TPRA includes certain protections to reinforce an individual's constitutionally protected rights during a pandemic. Those provisions include:

<sup>†</sup> [Section 418.108\(g\) of the Government Code](#) states: "The county judge or the mayor of a municipality may control ingress to and egress from a disaster area under the jurisdiction and authority of the county judge or mayor and control the movement of persons and the occupancy of premises in that area."

*Sec. 418A.004. Limitations. This chapter does not...*

*(7) authorize the seizure or confiscation of any firearm or ammunition from an individual who is lawfully carrying or possessing the firearm or ammunition; or*

*(8) authorize any person to prohibit or restrict the business operations of a firearms or ammunition manufacturer, distributor, wholesaler, supplier, or retailer or a sport shooting range, as defined by Section 250.001, Local Government Code.*

*Sec. 418A.058. Restricted Sale and Transportation of Materials. (a) The sale, dispensing, or transportation of firearms and ammunition may not be suspended or limited in response to a pandemic disaster.*

One particularly high-profile infringement that occurred during the pandemic was the short-lived closure of businesses that sell firearms and ammunition. These new provisions will prevent that violation from happening again while also protecting individuals who lawfully carry.

## **Establishing Business Liability Protections**

Last year, businesses that were permitted to operate were required to take several precautionary steps to ensure the safety of staff and customers, which included cleaning more frequently, requiring masks and face coverings, installing plexiglass dividers, and observing capacity limits. Even then, businesses still faced a significant level of risk from opening.

To address one major concern, the TPRA proposes to protect certain businesses operating during a pandemic by providing liability protection. The provision stipulates:

*Sec. 418A.007. CIVIL LIABILITY DURING PANDEMIC DISASTER. (b) A business or an entity operating during a pandemic disaster in this state is not liable for an injury caused by exposing or potentially exposing an individual to a disease if on the date of the exposure or potential exposure:*

- 1. The business or entity is authorized to do business in this state;*
- 2. The act or omission giving rise to the exposure or potential exposure was not willful, reckless, or grossly negligent.*

The extension of business liability protection to entities operating lawfully and responsibly will be a significant improvement over the status quo.

## **Strengthening Religious Freedom**

One alarming action taken by certain political subdivisions during the pandemic was to close houses of worship. Religious freedom and First Amendment supporters rallied for change in response. Those concerns are addressed in the TPRA, with a specific provision that states:

*Sec.418A.060. RELIGIOUS FREEDOM. Actions taken under a declared state of pandemic disaster must satisfy the religious freedom protections of Chapter 110, Civil Practice and Remedies Code, and the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.).*

The inclusion of this provision will prevent excessive encroachment on religious liberty.

## Prohibiting Local Election Alterations

In the latter half of 2020, certain local government officials argued for the authority to alter their election systems and voting rules. The TPRA seeks to prohibit this type of action in the future by offering the following provision:

*Sec. 418A104. LIMITATION ON ALTERATION OF VOTING PROCEDURES.  
(a) An election official of a political subdivision seeking to alter, in response to a pandemic disaster, any voting standard, practice, or procedure in a manner not otherwise expressly authorized by the Election Code, must first obtain approval of the proposed alteration from the secretary of state by submitting a written request for approval to the secretary of state.*

Such a provision, and its subsequent language, offer greater election protection and certainty during a pandemic, and will hinder political opportunists.

## Eliminates Disaster Tax Loophole

In 2019, the Texas Legislature enacted significant tax reform with the passage of Senate Bill 2. The Texas Property Tax Reform and Transparency Act empowers voters with the right to decide on big tax increases and limits local governments to 3.5% revenue growth annually, unless voters approve a larger increase. However, the property tax reform bill included an exception for disasters. During the COVID-19 pandemic, local governments have used this exception as a loophole to raise property taxes. HB 3 supplies Sec. 418A.105, which eliminates the disaster loophole for cities and counties. In the wake of a pandemic—including the COVID-19 pandemic, where Texans were forced to shelter in place, unemployment spiked, and thousands of businesses closed permanently—higher property taxes are not what those Texans need or deserve.

## Prohibits Jail as Punishment for Non-Compliance

Another issue that emerged early during the pandemic was the issuance of criminal penalties for individuals who did not comply with emergency orders. HB 3 includes Sec. 418A.152, which eliminates jail time as punishment for non-compliance of an emergency order. No individual should be punished for doing their everyday job or common daily activities.

## Limited Legislative Pandemic Committee

The TPRA provides for a limited check on executive authority by creating the Legislative Pandemic Disaster Oversight Committee. This committee would have two distinct powers, including the authority to:

1. *Discontinue the declaration of state of pandemic disaster; or*
2. *Terminate any order, proclamation, rule, or suspension issued pursuant to the declaration of state of pandemic disaster.*

Its membership would be comprised of:

- The Lieutenant Governor,
- The Speaker of the House,
- The Chair of the Senate Committee on Finance,
- The Chair of the Senate Committee on State Affairs,
- The Chair of the Senate Committee on Health and Human Services,
- The Chair of the Senate Committee on Education,

- The Chair of the House Committee on Appropriations,
- The Chair of the House Committee on State Affairs,
- The Chair of the House Committee on Public Health, and
- The Chair of the House Committee on Public Education.

Since the pandemic's beginning, the state has renewed its disaster declaration every 30 days, as allowed under current law. However, these renewals were not contingent on legislative approval. TPRA's inclusion of a limited legislative body, which may convene after a certain time period, represents a good change in the right direction.

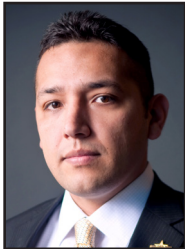
## **Conclusion**

The Committee Substitute for House Bill 3 represents a significant improvement over the status quo. Through its various provisions, it adjusts the system in a way that better balances government power and individual liberty during pandemics.

For that reason, I encourage the House Committee on State Affairs to look favorably upon the TPRA and vote for its passage. Thank you for your time, and I look forward to answering any questions that you may have. ★



## ABOUT THE AUTHOR



**James Quintero** is the policy director for the Government for the People campaign at the Texas Public Policy Foundation. Quintero focuses extensively on state and local government spending, taxes, debt, public pension reform, annexation, and local regulations. His work has been featured in the *New York Times*, *Forbes*, the *Huffington Post*, Fox News, Breitbart, and the *Austin American-Statesman*.

Quintero received an MPA with an emphasis in public finance from Texas State University and a BA in sociology from the University of Texas at Austin. He currently serves on Texas State University's MPA Program Advisory Council.

## **About Texas Public Policy Foundation**

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The public is demanding a different direction for their government, and the Texas Public Policy Foundation is providing the ideas that enable policymakers to chart that new course.

