



Testimony

Senate Bill 1616

Invited Testimony Before the Senate Committee on Health & Human Services

by Shelby Sterling, Policy Analyst

Madame Chairwoman and Members of the Committee:

My name is Shelby Sterling, and I am a policy analyst at the Texas Public Policy Foundation. Thank you for the opportunity to address the committee today. I am testifying in support of Senate Bill 1616.

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. Throughout the COVID-19 pandemic, this temporary authority enabled officials to impose a wide variety of rules and restrictions on Texans. As evidenced in the Foundation's research, many of these requirements have been overly burdensome, and some have even tipped into the realm of unlawfulness.*

Events over the last year have sparked serious concerns over the broad scope and application of these emergency powers. Americans enjoy certain fundamental protections, even during times of disaster. However, those protections appear to have been jeopardized by various local government actions. The abandonment of these protections spurred a federal judge to issue an opinion reminding officials that "[there is no pandemic exception to the Constitution of the United States or the Free Exercise Clause of the First Amendment](#)."

Despite this reminder, local government overreach has been a persistent problem during COVID-19. Such instances of government overstep include city and county officials extending local 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 the following:

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.

These abuses of local government emergency disaster powers make it apparent that Chapter 418 is in need of urgent reform. SB 1616 would limit local disaster authority by explicitly excluding applicability of such powers during a pandemic or spread of a communicable disease under Chapter 418 or public health disasters as defined by Section 81.003 of the Health and Safety Code.

Further, the revisions proposed in SB 1616 follow the original intent of the Texas Legislature. In 2005, the Texas Legislature amended Chapter 418 in response to several deadly and severely damaging hurricanes that struck Florida and the Gulf of Mexico. These storms led Governor Perry to direct the Texas Office of Homeland Security to evaluate the state's hurricane preparedness and assess Texas's ability to respond to catastrophic hurricanes. As a result, Section 418.108 was amended to expand local disaster declaration authority. The changes proposed in SB 1616 would restore the Texas Disaster Act and local government disaster authority to their original intent.

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

SB 1616 also addresses another serious concern: the ability to impose penalties for violations of emergency orders. While certain situations require reasonable enforcement mechanisms to gain public compliance, allowing every jurisdiction to invent their own criminal code creates a patchwork quilt of jailable offenses and invites overcriminalization.

Over the past 12 months, local governments have criminalized regular, everyday activities. For example, in April, the Harris County Judge issued an executive order requiring residents to wear a face mask in public. People found violating the judge's order faced fines as high as \$1,000 per instance. Other surrounding jurisdictions, like Montgomery County, did not threaten their residents with similar criminal penalties.

Permitting such inconsistencies to exist in the criminal code raises concerns and increases the likelihood that honest mistakes get punished harshly. Only state government should be in a position to criminalize behavior that puts public health at substantial risk of harm.

While circumstances may warrant the use of emergency powers, they are not unlimited, nor are authorities allowed to create their own extrajudicial concepts. The Texas Disaster Act is in need of reform, and during pandemics, which affect the whole state, we need statewide solutions rather than varying degrees of response from local governments.

Policymakers must strive to better balance government power with individual liberty in times of crisis. SB 1616 proposes to shift pandemic response to statewide authority and remove the ability of local governments to infringe on individual rights or threaten criminal penalties.

SB 1616 represents a significant improvement to current law. For these reasons, I encourage the Senate Committee on Health & Human Services to look favorably upon SB 1616 and vote for its passage. Thank you for your time, and I am happy to answer any questions you may have. ★

ABOUT THE AUTHOR



Shelby Sterling, JD, is a policy analyst for the Government for the People campaign at the Texas Public Policy Foundation.

Sterling is a licensed attorney in the state of Texas with a JD from Texas A&M University School of Law in Fort Worth. She participated in the law school's residency externship program and graduated with a concentration in public policy. Sterling received her BA in Letters from the University of Oklahoma, a combination study of philosophy, history, and literature on the U.S. Constitution and the Founding Fathers.

About Texas Public Policy Foundation

The Texas Public Policy Foundation is a 501(c)3 nonprofit, nonpartisan research institute. The Foundation promotes and defends liberty, personal responsibility, and free enterprise in Texas and the nation by educating and affecting policymakers and the Texas public policy debate with academically sound research and outreach.

Funded by thousands of individuals, foundations, and corporations, the Foundation does not accept government funds or contributions to influence the outcomes of its research.

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.

