



# Testimony

## Testimony Before the Senate Committee on Local Government: Ballot Language Interim Charge

by James Quintero

Mr. Chairman and Members of the Committee—

My name is James Quintero, and I am a policy director at the Texas Public Policy Foundation, a nonprofit free-market research institute headquartered in Austin, Texas. Thank you for the opportunity to address the committee today on this important topic.

As you know, the interim charge under consideration this afternoon states:

**Ballot Language:** Study the development of the language used for constitutional amendment and local ballot propositions. Recommend changes to make ballot propositions more easily understood by voters.

I commend the committee for taking up this interim charge. There is a growing body of evidence that suggests the need for increased legislative scrutiny of local ballot propositions. History is filled with examples of voters being presented with muddy ballot language that was a challenge to read, propositions with important features missing, and various items being misrepresented.

Here are a few high-profile examples to illustrate the point.

### MUDDY LANGUAGE

*City of Austin, Ridesharing—May 2016*

In May 2016, the city of Austin asked voters to decide on whether to keep or reject an already-passed ordinance governing transportation network companies (TNCs), also known as ridesharing companies. The city's ordinance enacted a set of harsh regulations involving fingerprint-based background checks, vehicle inspections, and emblems on cars, among other things. The merits of the regulations aside, the 2016 proposition posed a real difficulty for voters as it was difficult to decipher.

Here is the [ballot language](#) that appeared before voters:

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?

Ultimately, voters opted to reject the proposition by a margin of 55.8% vs. 44.2%, which meant keeping the city's ordinance governing TNCs in place. In the aftermath of the election, however, some [charged](#) that the result was influenced by confusing language that appeared on the ballot and said the city did not properly present the question to the public. In hindsight, it is obvious to see the appeal of those criticisms. The measure's language is long, complex, and requires foreknowledge of the city's previous actions, i.e. the adoption and possible repeal of an ordinance governing TNCs. It asks entirely too much of the average voter and it does in a complicated way.

*City of Houston, Term Limits—November 2015*

In 2015, Houston voters were asked to decide on Proposition 2, “[a ballot measure that changed Houston’s charter to limit elected officials to two four-year terms instead of the previous cap of three two-year terms.](#)” The [proposition language](#) 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, a voter is likely to read the proposition and discern that it “limit(ed)” one’s time office when in fact it lengthened it.

Second, the language was constructed in a deceptive manner. 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 omitted an important aspect—that its approval would increase the total amount of time certain municipal officers could serve, extending it from six years to eight years or more, depending on circumstances.

In 2019, the First Court of Appeals ruled that the proposition’s language “[substantially submitted the measure with such definiteness and certainty that voters were not misled.](#)” However, the plaintiffs, at the time, signaled their intent to take the case to the Texas Supreme Court for further adjudication.

**MISSING FEATURES***City of Houston, Drainage Fee—November 2010*

In 2010, the city of Houston infamously propositioned voters with a charter amendment question on the establishment of a new drainage fee, or as it came to be known a “rain tax,” that [read](#) as follows:

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 proposition narrowly passed (174,080 in support, 166,867 opposed). However, concerns were raised with the measure’s language as it seemed to exclude its chief feature—the imposition of a widespread drainage fee. Thus, it was alleged to be misleading to voters.

In response to its passage, a group of voters filed a lawsuit, challenging the validity of the proposition. The suit went all the way to the Texas Supreme Court where it was decided that Houston’s ballot language did not meet the common law standard of preserving ballot integrity. The Court found that measures 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.](#)”

**MISREPRESENTATION***City of Austin, Proposition K—November 2018*

In 2018, the city of Austin held an election on a citizen-led initiative known as Proposition K, which would have required a third-party independent audit of the city’s budget and operations. The adopted [language](#) for the measure read:

Without using the existing internal City Auditor or existing independent external auditor, shall the City Code be amended to require an efficiency audit of the City’s operational and fiscal performance performed by a third-party audit consultant, at an estimated cost of \$1-\$5 million?

As you may be able to tell from the language above, the city did not faithfully represent the measure to the public, but instead it adopted language that presented the efficiency audit in a bad light, suggesting it would be a costly undertaking that duplicated existing processes. This language obscured the efficiency audit’s chief features, purpose, and character, and

arguably, negatively influenced the direction of the vote.

As a result, the measure [failed to pass](#) by a margin of 57.9% opposed vs. 42.1% in favor.

#### *Statewide, Tax Rate Misdirection—Ongoing*

One common and misleading tactic employed to persuade voters to approve local bond propositions is to declare that its approval will not result in the taxing entity raising the tax rate.

The misdirection hinges on the tax rate being held steady (or even reduced slightly) while property values soar. By virtue of the tax rate not being lowered properly to compensate for the rise in values, homeowners and businesses see their tax bills grow from one year to the next. With this added tax money, officials can pay for the new debt service costs and tell taxpayers their tax rate did not increase.

This tactic sees its most frequent use as elections near. One example was recently provided by the [Tyler Morning Telegraph](#) that reported on a large, upcoming school bond. “The Tyler ISD bond package on the May ballot totals \$89 million...After approving the bond package to be placed on the May ballot, Tyler ISD School Board President Wade Washmon said it will not change the district’s tax rate.”

Notice the emphasis on keeping the tax rate steady. Doing so, at a time of fast-rising valuations, will cause tax bills to spike, even if it’s not explicitly said.

But as effective as this tactic has been in the past, it is getting harder to pull off. That’s because the Texas Legislature passed a [law](#) in 2019 that requires ISDs to include the following statement on new bond propositions: “THIS IS A PROPERTY TAX INCREASE.” The change is intended to help voters understand that new debt generally brings new taxes, no matter what the spenders claim.

Not everyone is happy that voters have more information at the ballot box though. The article mentioned earlier features a representative with the Texas Association of School Boards, one of the state’s largest taxpayer-funded lobby groups, saying: “I’ve heard from several trustees that they’re frustrated because they may be doing a bond this year or something else that won’t actually increase their tax rate, but they’re required to put a statement on there in all caps—can’t even change the font—that says ‘this is a property tax increase.’”

That’s quite a revealing statement, and it signals the need for further reform.

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.

#### **Recommendations**

***Codify the Texas Supreme Court’s decision defining the common law standard for ballot integrity.*** In the drainage fee case, the Texas Supreme Court defined the common law standard for ballot integrity, resolving a split among the appellate courts. The decision stated that proposed amendments must be submitted with such definiteness and certainty that voters are not misled. The court said that the ballot proposition did not have to reproduce the amendment or mention every detail of the measure, but that it should substantially identify the amendment’s purpose, character, and chief features. It would be ideal for the Legislature to follow up on this decision by codifying it in state law.

***Bring transparency to the voting booth.*** Include [a cost element on every bond proposition](#). That is, voters should know how much a bond’s passage will add to the average homeowner’s tax bill—and they should have that cost estimate provided in the voting booth.

***Establish a third-party review of ballot language.*** Task the Texas Secretary of State or another state entity with the duty to review ballot propositions to determine whether the language is definite and certain so as not to mislead voters and cure defects if and when they are found.

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 is lacking in the current environment.

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

## ABOUT THE AUTHOR

**James Quintero** is the policy director for the Texas Public Policy Foundation's Government for the People initiative. Having joined the Foundation in 2008, Quintero's research covers a wide range of issues, mostly related to local government matters, including: taxes, spending, debt, transparency, annexation, and pension reform. His work has been featured in the *New York Times*, *Forbes*, *Fox News*, *Breitbart*, and more.

Quintero received an M.P.A. from Texas State University and a B.A. from the University of Texas at Austin. He is currently seeking a Ph.D. in public policy from Liberty University.

Quintero and his wife, Tricia, are blessed with five beautiful children, a Great Dane, a Boston Terrier, and an exceptionally large grocery bill.

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