



Testimony

Testimony to the House Committee on Land & Resource Management

Interim Charge 1

By Shelby Sterling, JD

Mr. Chairman 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 provide written testimony to the committee on [Interim Charge No. 1](#), which reads as follows:

*Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure intended legislative outcome of all legislation, including **HB 347**, which eliminates the distinction between Tier 1 and Tier 2 counties and municipalities so that all cities are prohibited from using forced annexation. Determine if there is a need for further annexation legislation in Texas. Study how implementation of voter-approved annexation impacts the need for extraterritorial jurisdiction.*

My written remarks below will address the need for further annexation legislation in Texas and the ways in which voter-approved annexation has impacted the need for an extraterritorial jurisdiction (ETJ) moving forward.

Further Annexation Legislation Needed

With the passage of the 85th session's [Senate Bill 6](#) and the 86th session's [House Bill 347](#), state law now requires municipalities to secure voter approval before annexing property owners residing outside of a city's corporate boundaries. This was a historic change deserving of high praise. It has fundamentally transformed city governance for the better.

However, eliminating the practice of involuntary annexation should be seen as a first step. Still more changes are needed to improve the system.

Require Cities to Wait a Minimum of 5 Years Before Attempting to Annex the Same Property.

One beneficial change that should be considered is requiring a cooling-off period between elections. Under current law, if a majority of voters reject a municipality's proposed annexation at the ballot box, those same residents could be asked to vote on the same question as soon as one year later. Per [Section 43.0697](#) of the Local Government Code:

*(b) If at the election held under this subchapter a majority of qualified voters do not approve the proposed annexation, or if the municipality is required to petition owners of land in the area under [Section 43.0695](#) and does not obtain the required number of signatures, **the municipality may not annex the area and may not adopt another resolution under [Section 43.0692](#) to annex the area until the first anniversary of the date of the adoption of the resolution.** [emphasis mine]*

State lawmakers should not allow annexation elections to occur so close together. Both cities and nonresidents deserve to have a longer period after a failed election to absorb the results and reassess the situation. Requiring cities to wait 5 years or longer after a failed annexation election would be more appropriate.

Better Balance Resident Choice With City Power in the Disannexation Process.

Another change to consider is leveling the playing field with respect to the disannexation process.

[Section 43.141 of the Local Government Code](#) outlines the process by which annexed residents may seek to disentangle themselves from a city. It is a cumbersome and difficult process that appears weighted against those seeking freedom from government. For example, consider that state law currently requires the petition for disannexation to:

1. be written;
2. request the disannexation;
3. be signed in ink or indelible pencil by the appropriate voters;
4. be signed by each voter as that person's name appears on the most recent official list of registered voters;
5. contain a note made by each voter stating the person's residence address and the precinct number and voter registration number that appear on the person's voter registration certificate;
6. describe the area to be disannexed and have a plat or other likeness of the area attached; and
7. be presented to the secretary of the municipality.

In addition, petitioners must also adhere to certain notification requirements, like “posting a copy of the petition for 10 days in three public places in the annexed area and ... publishing a copy of the petition once in a newspaper of general circulation serving the area before the 15th day before the date the petition is first circulated.” What's more, the city secretary must be presented with proof of the posting and the publication as attachments to the petition in the form of:

1. the sworn affidavit of any voter who signed the petition, stating the places and dates of the posting; and
2. the sworn affidavit of the publisher of the newspaper in which the notice was published, stating the name of the newspaper and the issue and date of publication.

The process of disannexing an area from a city is cumbersome and complex. It may even be unnavigable for anyone except those with legal aid and significant financial resources. The average Texan deserves to have a better system in place so that, if the need arises and fellow voters consent, the oppressed have a realistic way out.

Voter-Approved Annexation Demands ETJ Reform

In light of the Legislature's decision to eliminate involuntary annexation and require consent, the scope and utility of the ETJ concept have also changed. This new relationship should lead to a reevaluation of the concept as a whole.

Rethink Municipal Regulatory Authority in the ETJ.

Under current law, cities can exercise certain regulatory authority in the ETJ—including plat and subdivision regulatory authority; sign location and removal; creation powers over industrial districts, planned unit development districts, and municipal drainage utility systems; and the imposition of impact fees for water and wastewater facilities and storm water, drainage, and flood control facilities. These expansive powers raise serious questions about “regulation without representation.”

After all, those residing within a city's ETJ must comply with municipal authority, even though they did not elect nor can they democratically influence their city governors. Worse yet, a person may theoretically reside in an ETJ in perpetuity, potentially never having the opportunity to participate in city elections. Such a deprivation is inconsistent with the rights guaranteed under the U.S. and Texas constitutions.

Americans have a constitutionally protected right to representative government. Consider [Article IV, Section 4, of the U.S. Constitution](#), which states:

The United States shall guarantee to every State in this Union a Republican Form of Government...

The Texas Constitution is equally clear and forthright. [Article I, Section 2](#) states:

*All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. **The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.** [emphasis mine]*

Given these assurances, allowing municipalities to wield extensive powers against people without their consent makes little sense. State lawmakers would do well to conduct a comprehensive review of municipal regulatory authority in the ETJ

and eliminate as much as possible. Similarly, the Legislature could also pass legislation prohibiting cities from exercising authority in the ETJ unless explicitly authorized by state law.

Reconsider Allowing Cities to Impose Fees and Fines in the ETJ.

Under current law, cities can impose fines and fees on ETJ residents even when the area has been disannexed or voters rejected an attempt at annexation through election as required by state law. This authority should be reconsidered.

ETJ residents should not be obligated to contribute financially to a city that they have intentionally extricated themselves from or that has been spurned at the ballot box. Those residents ought to be able to keep their hard-earned money.

To recap, the Texas Public Policy Foundation urges the Texas House Committee on Land & Resource Management to make the following recommendations in its final report:

- Require cities to wait a minimum of 5 years before attempting to annex the same property;
- Better balance resident choice with city power in the disannexation process;
- Eliminate municipal regulatory authority in the ETJ to the greatest extent possible; and
- Reconsider allowing cities to impose fees and fines in the ETJ.

Thank you for your time and consideration.

Resources

[Arch Resorts, LLC v. City of McKinney Amicus Brief](#), Texas Public Policy Foundation (May 11, 2016).

[City Limits: What Is an ETJ Good For?](#), Texas Public Policy Foundation (January 10, 2019).

City of McKinney v. Custer Storage, No. 05-17-00546-CV (Tex. App.-Dallas 2018).

[House Bill 347: Testimony Before the Texas House Committee on Land & Resource Management](#), Texas Public Policy Foundation (March 5, 2019).

[House Bill 3417: Testimony Before the Texas House Committee on Land & Resource Management](#), Texas Public Policy Foundation (April 2, 2019).

[Senate Bill 1303: Testimony Before the Texas Senate Committee on Intergovernmental Relations](#), Texas Public Policy Foundation (March 25, 2019).

[Toward Annexation With Representation](#), Texas Public Policy Foundation (February 2018).

Town of Lakewood Village v. Bizios, 493 S.W.3d 527, 530 (Tex. 2016).

ABOUT THE AUTHOR



Shelby Sterling, JD, is a policy analyst for the Government for the People Project 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.

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