MERCATUS CENTER
George Mason University

TESTIMONY

VALID PETITIONS AND LIMITED GOVERNMENT IN TEXAS

Salim Furth
Senior Research Fellow, Urbanity Project, Mercatus Center at George Mason University

Texas House of Representatives, House Committee on Land & Resource Management

APRIL 19, 2023

Chair Burns, Vice Chair Rogers, and members of the House Committee on Land & Resource Management, thank you for giving me the opportunity to share my research on the role of valid petitions in Texas. I study land use regulation and housing markets as codirector of the Urbanity Project at the Mercatus Center at George Mason University. The Mercatus Center is proud to be a financial supporter of the Texas Zoning Atlas, which we hope will be a valuable tool to the Lone Star State's cities and citizens. In my personal capacity, I am also an advisor to the board of Texans for Reasonable Solutions.

As an attachment to this testimony, please find two policy briefs I have coauthored discussing the scope of valid petition laws nationwide and their use in Texas.

Texas is one of 20 states with a mandatory valid petition law.[1] In Texas, owners of land located in a narrow 200-foot band can sign a petition protesting a proposed rezoning. If owners of 20 percent of such land do so, their petition is valid, and the city cannot proceed with the rezoning unless three-fourths of the city council agree. This minority-triggered supermajority requirement is one of several features of the valid petition process which departs from the norms of representative government and is thus ripe for reform.

LIMITED GOVERNMENT RESPECTS PROPERTY RIGHTS

In Plano, a landowner in a commercial area asked the city for a rezoning that would allow the development of an assisted living retirement home.[2] Four of the neighboring landowners—other businesspeople—wrote in favor, but a single landowner protested. Since his parcel included 20 percent of the buffer area, this protest by a single voter constituted a valid petition and triggered a supermajority requirement at the council. The rezoning was defeated.

This is not how limited, representative local government ought to operate. Local elected officials must balance the concerns of many constituents. In this case, those might include families eager for a convenient option to house an aging relative or city departments with technical concerns about the site. Against the various interested constituents—including the neighbors—the city should give great weight to the property owner's desire to use his land as he sees fit.

For more information or to meet with the scholar, contact
Mercatus Outreach, 703-993-4930, mercatusoutreach@mercatus.gmu.edu
Mercatus Center at George Mason University, 3434 Washington Blvd., 4th Floor, Arlington, Virginia 22201

Imagine, for a moment, that instead of its actual law, Texas required that cities honor landowner requests for rezoning permission unless a supermajority of the city council opposed it. Would this legislative body deem it wise to remove such a powerful property right and replace it with an equally strong anti-property right vested in those who happen to own land abutting the property in question, and whose commercial interests may be in direct competition? One imagines not. Yet, that anti-property right persists.

The bill before you, H.B. 4637, leaves most of the current law in place. It would imitate the long-standing law in Oklahoma in requiring that those protesting a rezoning muster support from a bare majority of neighboring landowners. This change would curtail the worst abuses of the current process.

FURTHER FIXES

This bill will not transform valid petitions into a benign instrument fully in keeping with limited, representative government. Toward that end, this body may wish to consider further reforms in future legislation:

- Reducing the council supermajority triggered by a valid petition from three-fourths to two-thirds, as in about half the states.
- Incorporating the views of residents who live within the band surrounding the rezoned property, instead of only considering landowners.
- Eliminating the power of petition for rezonings that purely expand property rights.
- Expanding the band of land whose owners are empowered to protest a rezoning from 200 to 500 feet, which would make it less likely that a single landowner could file a petition.

Finally, the Texas legislature or Supreme Court will someday be forced to grapple with the contradictions created by *City of Austin v. Acuña*, a court case that blocked Austin from overhauling its citywide zoning. To my knowledge, no other state's courts have interpreted petition powers to be relevant to citywide rezonings. If Texas legislators want to keep the court's expansive interpretation, they would be wise to carefully craft a new statute for that purpose.

CONCLUSION

In Texas and elsewhere, the present legislative session has witnessed a bipartisan flood of legislation intended to ease the housing cost crisis by loosening the strictures of local zoning. Some bills preempt cities. Defenders of city power claim that cities are working hard to ease zoning on their own. This is sometimes true. But when city reform efforts to rezone for more housing can be held hostage by just 20 percent of neighboring landowners, is it any wonder that the powers of the legislature, immune from valid petitions, are called upon to do what cities could not?

[1] Other states usually call them "protest petitions" rather than "valid petitions." Salim Furth and Kelcie McKinley, "Rezoning Protest Petitions Are Ripe for Reform" (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, January 2022).
[2] City of Plano, Planning and Zoning Commission, Zoning Case 2021-031.