TEXAS PUBLIC POLICY FOUNDATION
Testimony

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Center for Local Governance

Involuntary Annexation

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by Allegra Hill, Policy Analyst

Chairman Lucio & Members of the Committee:

My name is Allegra Hill and I am a policy analyst with the Center for Local Governance at the Texas Public Policy Foundation. The Foundation is a nonprofit think tank based here in Austin, focused on advancing liberty and private property rights.

Thank you all very much for inviting me to speak today. The Lieutenant Governor has charged this Committee to:

> **Identify areas of concern in regards to statutory extraterritorial jurisdiction expansion and the processes used by municipalities for annexation, specifically reviewing whether existing statute strikes the appropriate balance between safeguarding private property rights and encouraging orderly growth and economic development. Make recommendations for legislative action, if necessary.**

The charge is rightfully focused on whether the existing law "strikes the appropriate balance." In other words, is the invasion of people's rights—to the extent such an invasion is permitted under current statute—justified in light of the desire for municipal growth? Do the ends justify the means? I would simply submit to you that the answer is no; municipal expansion does not justify bowling over the minority, and depriving people of the right to vote.

First, the process of continual municipal expansion is not a good in and of itself. In fact, if anything, many would say it's not good at all. Bigger cities lead to centralized authority, a government distanced from its citizenry, an increased likelihood for bureaucratic inefficiency, and more generalized ordinances that gloss over the differences between the urban, suburban, and rural areas.

Furthermore, cities are not always able to actually improve the services provided to annexed communities, or even to extend services to such areas at all. A municipality may offer inferior services to those provided by the relevant MUDs, or it may lack the financial or personnel resources to extend police protection, trash pickup, and other services to new areas. San Antonio's recent annexation plan is an excellent example of this. There, the San Antonio Police Officers Association came out against the city's plan to annex more than 66 square miles of land, noting that the police force was "barely covering what we've got right now." Taking on more area would be a "horrible idea" in the words of president of the Police Officers Association, and could potentially jeopardize the safety of one or both communities.

Growing is only a good thing if it *benefits* both communities. Just like a sale in the marketplace, it *is* possible for both sides to come away better off. And that's when the sale should happen.

Yet, this only works if both sides are willing participants. And that's not the case with involuntary annexation. Instead, outlying communities are essentially forced to "purchase" city services, whatever the price.

Proponents of involuntary annexation say that the status quo simply prioritizes the needs of the many over the needs of the few, believing that a city-initiated annexation should always be permitted. The injury inflicted on the outlying areas is simply a cost they're willing to pay.

But the ends do not justify the means in this situation.

continued

This is a state and a nation built on protecting the minority, not bowling it over. Indeed, protection of the minority was a primary reason for the entire structure of our government as a republican democracy. James Madison, within months of signing the Constitution, noted that "[i]t is of great importance in a republic, not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part" (Federalist No. 51). He knew that the tyranny of the majority was just as dangerous as a ruling tyrant.* This is why pure democracy was rejected. "Republican governments promote the common good by placing power in the hands of the people, while curtailing the majority's ability to invade the minority's fundamental rights" (*Evenwel v. Abbott*, No. 14–940, at *12 (April 4, 2016) (Thomas, J., concurring)†).

Allowing a city's desire for growth to trump the rights of the minority directly undercuts this fundamental principle. Outlying areas have no representation in municipal government, and no one to speak for their interests in a proposed annexation. To deprive the minority of the right to even vote on the process renders such citizens essentially defenseless to protect their property.

Moreover, silencing the voice of the affected citizens implicates yet another core principle: the idea that people are entitled to an impartial determination of interests before their rights are taken away. Again, the Founders foresaw the problem at hand, expressing "particular concern [about]. . . the majority of people violating the property rights of the minority" (*Evenwel v. Abbott*, No. 14–940, at *11 (April 4, 2016) (Thomas, J., concurring)). This protection forms the basis of the procedural due process requirements in the Constitution, and all throughout the court system. Whether you're being evicted, sued for damages, or taken to prison, you have a right to present your case to someone other than the opposing party for a determination.

Aside from annexation, what other area of law changes the status of a person's property—much less his homestead—without giving him a meaningful opportunity to protest? Can we really say that municipal growth is the *one* area worth depriving people of this basic right? I respectfully submit to you that no, we cannot. The price is simply too high.

RECOMMENDATION

The Texas Public Policy Foundation urges the Committee to reconsider "the balance" between municipal growth, protection of the minority, and the right to vote. Specifically, the Foundation recommends amending the Local Government Code to require a majority of the voting residents in the affected area to approve a proposed annexation.

Thank you for your time, and I'd be happy to answer any questions you have. ★

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* Madison is one representative among many influential Founders and thinkers who recognize the danger posed by the "tyranny of the majority." Alexis de Tocqueville wrote:

> A majority taken collectively is only an individual, whose opinions, and frequently whose interests, are opposed to those of another individual, who is styled a minority. If it be admitted that a man possessing absolute power may misuse that power by wronging his adversaries, why should not a majority be liable to the same reproach? Men do not change their characters by uniting with each other; nor does their patience in the presence of obstacles increase with their strength. For my own part I cannot believe it: the power to do everything, which I should refuse to one of my equals, I will never grant to any number of them (Tocqueville, 255).

The principle is still recognized by our nation's prominent legal scholars today. Only last month, the Supreme Court recognized that:

> The Framers also understood that unchecked majorities could lead to tyranny of the majority. As a result, many viewed anti-democratic checks as indispensable to republican government (Evenwel v. Abbott, No. 14–940, at *10 (April 4, 2016) (Thomas, J., concurring)).

† Evenwel v. Abbott deals with the "one person, one vote" requirement. In his concurrence, Justice Thomas contends that the Court should not adopt a single theory of representation, but should view the case in light of the Framers' larger intent to ensure a republican form of government among the states:

> The Constitution lacks a single, comprehensive theory of representation. The Framers understood the tension between majority rule and protecting fundamental rights from majorities. This understanding led to a 'mixed' constitutional structure that did not embrace any single theory of representation but instead struck a compromise between those who sought an equitable system of representation and those who were concerned that the majority would abuse plenary control over public policy. . . . The Framers therefore made difficult compromises on the apportionment of federal representation, and they did not prescribe any one theory of how States had to divide their legislatures (Evenwel v. Abbott, No. 14–940 (April 4, 2016)).

REFERENCES

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