



Testimony

Senate Bill 1025 & Senate Joint Resolution 45

Testimony to the Texas Senate Committee on State Affairs

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. Thank you for the opportunity to address the committee today. I am testifying in support of [Senate Bill 1025](#) and [Senate Joint Resolution 45](#).

First, allow me to provide some background. 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 disaster. These extraordinary powers enabled officials to impose a wide variety of rules and restrictions in response to COVID-19. As documented in the Foundation's research, some jurisdictions exercised that authority in ways that were troubling.*

Legitimate concerns exist over the scope and application of Texas's emergency management powers. Americans enjoy certain fundamental protections, even during times of disaster. Yet, those protections were missing in a number of high-profile instances. In fact, their absence spurred one federal court judge to [issue a legal opinion](#) reminding everyone that "there is no pandemic exception to the Constitution of the United States or the Free Exercise Clause of the First Amendment."

Events over the last year make plain that Chapter 418 needs reform. The aim of this effort must be to better balance government power with individual liberty in times of crisis.

As introduced, SB 1025 and SJR 45 would make critical changes to Chapter 418 by clarifying the roles of the executive and the legislative during times of disaster, creating a new legislative check against executive overreach, and making certain protections explicit. My written remarks will examine some of these proposals' most constructive provisions.

Powers Reserved to the Legislature

Under the proposed legislation, only the Texas Legislature would have the authority to suspend a provision of the Code of Criminal Procedure, the Penal Code, or the Election Code during a declared state of disaster. This stipulation affirms an important structural precept established since the founding, which is that under our system of government, the Legislature alone is responsible for creating, voiding, and nullifying laws.

Another provision enhances the Legislature's role by specifying that only it has the authority to restrict or impair the operation or occupancy of certain businesses or houses of worship. This provision promises some measure of future protection against preferential treatment and selective rulemaking, at least with regard to executive action.

Finally, the proposed bill language clarifies that only state lawmakers can "[renew or extend the governor's state of disaster declaration](#)." By effectively limiting a unilateral statewide disaster declaration to a 30-day period, this proviso introduces a highly significant concept into Chapter 418—a legislative check on executive authority that becomes operative after a reasonable amount of time.

A New Check-and-Balance

Senate Bill 1025 and SJR 45 propose to improve upon our system of checks and balances by adding a requirement that only the Legislature can renew or extend a state of disaster. In order to continue a disaster declaration beyond 30 days, a governor would be required to convene a special session of the Legislature should any of the following conditions be met:

- The declaration affects half of the state's population;

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

- The declaration affects two fifths of the counties; or
- The declaration affects two thirds of the counties in three or more trauma services regions.

The governor is also required to call a special session if he or she finds that the Legislature's authority, as outlined in SB 1025, is expressly needed to contend with an protracted disaster and state lawmakers are not already in session.

Finally, the legislation prohibits the governor from declaring a new state of disaster based on the same or similar circumstances covered under a prior declaration that was not renewed by the Legislature.

In concert, these provisions seek to enshrine a more robust role for the legislative branch in times of disaster and initiate additional oversight once enough time has passed from the event horizon.

Playing by the Rules

To ensure that any future executive acts in accordance with the proposed legislation, the bill authors have included an enforcement mechanism that grants any sitting legislator at the time of the disaster standing to challenge the executive branch at the Texas Supreme Court, should a governor not convene a special session of the Legislature.

Once convened, the Legislature has the authority to terminate or renew orders as it deems appropriate. The body's decision may be effectuated by a concurrent resolution or another legislative enactment that is not subject to veto.

Including these two elements is important from the standpoint of guaranteeing the Legislature's seat at the table and ensuring compliance.

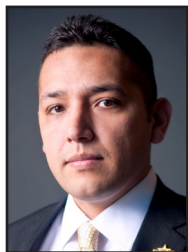
Conclusion

Senate Bill 1025 and Senate Joint Resolution 45 represent a significant improvement over the status quo. Through various provisions, the legislation reforms emergency management powers in a way that better balances the competing needs for decisive action in a time of crisis and the preservation of individual liberty.

The measures also strengthen our existing system of checks and balances, which is at the very heart of our constitutional republic. The concept's importance is perhaps best captured by [James Madison, who said](#), "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place, oblige it to control itself." Through Madison's words, we can see the question and the answer clearly today.

For these reasons, I encourage the Senate Committee on State Affairs to look favorably upon the legislation and vote for its passage. Thank you for your time, and I look forward to answering any questions that you may have. ★

ABOUT THE AUTHOR



James Quintero is the policy director for the Government for the People campaign at the Texas Public Policy Foundation. Quintero focuses extensively on state and local government spending, taxes, debt, public pension reform, annexation, and local regulations. His work has been featured in the *New York Times*, *Forbes*, the *Huffington Post*, Fox News, Breitbart, and the *Austin American-Statesman*.

Quintero received an MPA with an emphasis in public finance from Texas State University and a BA in sociology from the University of Texas at Austin. He currently serves on Texas State University's MPA Program Advisory Council.

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.

