

CITIZEN-INITIATED CHARTER AMENDMENT PETITIONS

ISSUE: The number of signatures required for a citizen-initiated petition for municipal charter amendments at 5 percent or 20,000 qualified voters, whichever is less, is too low. Because legislation in 2007 (SB 1184 by Watson) and 2009 (SB 690 by Wentworth/HB 3458 Branch) raising the threshold to 10 percent of registered voters failed to pass, the abuses related to citizen-initiated petitions for charter amendments deserve legislative review.

BACKGROUND:

In Texas, Chapter 9 of the Local Government Code allows citizen-initiated elections to amend the charter of a home-rule city if the amendment is supported by a petition of 5 percent or 20,000 qualified voters, whichever is less.

This threshold is far lower than any other threshold prescribed for petition-initiated elections in Texas. State law does not stipulate a universal petition threshold for other types of citizen-initiated petitions and various issue-specific thresholds have been established over time. Currently, state law allows for citizen initiated elections via petitions for everything from the sale of alcoholic beverages (25-35 percent of registered voters required to trigger an election, depending on proposed nature of alcohol sales) to the prohibition of bingo (10 percent of registered voters to trigger an election).

Traditional citizen-initiated elections that guarantee citizens can petition their local government are initiatives and referendums (I&Rs) and recall elections. The I&R process allows citizen initiated elections to repeal or initiate local ordinances and recall elections. Cities in Texas have a range of petition thresholds for recall, initiative, and referendum elections in their city charters.

In no major Texas city is an initiative, referendum, or recall election threshold as low as the five percent threshold state law allows putting charter amendments before the electorate.

Houston requires a 15 percent threshold for initiatives and a 10 percent threshold for referendums and triggering a recall election in Houston requires a 25 percent threshold. In Austin, the threshold is 10 percent for all three types.

A city's charter, the municipal equivalent of a constitution, should have safeguards in place to assure that the charter is not used to circumvent the legislative process and avoid the more reasonable requirements to bring forward a petition for an ordinance.

ARGUMENTS:

A higher threshold protects the integrity of the democratic process – A higher threshold would guard against the democratic process being co-opted by a small group of activists funded by a single contributor. In a current citizen-initiated charter amendment on the November 4, 2008 ballot in the City of Austin, one person has provided more than 89 percent of the funding in support of the proposed charter amendment. This is antithetical to the spirit of I&Rs, which should represent the people's mandate, not a person's.

Financers of charter amendment campaigns in the City of Austin in 2008, 2006 (two proposals), 2002, and 1997 hired full-time, paid staff to collect signatures. The financer of the 2008 Austin charter amendment campaign hired a campaign coordinator from outside Austin and paid more than 60 staffers from the city, state, and even nationwide to collect signatures for the proposed amendment.

This practice also runs counter to the intent of I&Rs, which should represent a groundswell of support from the local community and not a group of outsiders getting paid per signature.

A higher threshold would prevent questionable ideas from becoming bad law – A city’s charter, the municipal equivalent of a constitution, should have safeguards in place to assure that the charter is not abused. The process for amending a city’s charter is nearly effortless when compared to the process to amend the state constitution. The requirements to amend the Texas Constitution include two-thirds approval by both chambers of the Legislature and approval by Texas voters.

A flat rate of 10 percent would create a more realistic barometer of public support – Increasing the petition threshold to a flat 10 percent of registered voters establishes a more realistic barometer of public support. The current code allows citizen-initiated petitions to gather 5 percent or 20,000 qualified voters, **whichever is less**. For large metropolitan areas, 20,000 qualified voters can represent only a small fraction of voters. The city of Houston, for example, has 915,055 registered voters. A petition with signatures of 20,000 voters would only represent **two percent** of the registered voters in the city, clearly not a good barometer of public support.

Since 1997, four of the five charter amendment initiatives in the city of Austin brought forward with a 5 percent threshold for signatures have been defeated by Austin voters by a wide margin, while two citizen-initiated ordinances with a 10 percent threshold passed, demonstrating that the higher threshold is a barometer of public support.

Charter amendment elections are expensive for everyone – A higher signature threshold would strike a fair balance between the right for citizens to petition local government and the cost of accommodating petition-initiated elections to taxpayers. Holding an election is expensive and the cost of an election comes out of the city’s operating budget. Public awareness campaigns to educate voters on the consequences of proposals are also expensive. Some of the ideas themselves are expensive to implement if passed into law and others are not sound enough to withstand expensive litigation.

For example, it cost the City of Austin approximately \$500,000 to hold the November 2008 charter amendment election which, had it passed, would have exposed the City of Austin to lawsuits, discredited the city’s reputation, limited the city’s ability to recruit businesses, and damaged its bond rating. Proponents of the 2008 amendment raised \$125,000 as of October 2008, and opponents spent \$360,000 to communicate with Austin voters to educate them to the point that they could make an informed vote. However, this money could be better spent on community benefits rather than costly fights at the ballot box.

In the 2006 charter amendment election, two propositions brought forward by a small group of activists bypassed the public input process and the opposing sides spent more than \$1 million on campaigns. The 2006 campaign in support of the propositions was largely financed by a single source, as is the case in the 2008 charter election. The *Austin American-Statesman* reported that the Save Our Springs Alliance and the group’s longtime benefactor, Kirk Mitchell, contributed about 85 percent of the total campaign costs in support of the amendments; SOS contributions included both cash and services; and Mitchell alone gave more than \$132,000 in the waning days of the campaign. Additionally, the 2006 charter amendment would have cost the city more than \$36 million to implement had it passed.

CITIZEN-INITIATED CHARTER AMENDMENTS BROUGHT FORWARD THROUGH PAID PETITION DRIVES IN THE CITY OF AUSTIN

YEAR	% of VOTERS	ISSUE	OUTCOME
1997	5%	<p>“Clean Campaigns”: limited City of Austin Council campaign contributions to \$100 per person and other provisions. This initiative was so harmful to the election process that an amendment was placed on the 2006 ballot by the Austin City Council to raise the limit from \$100 to \$300 per person and included other provisions.</p> <p>Limiting the amount of money candidates have to spend to communicate with voters has had a negative effect on voter turnout. Before campaign contributions were limited, voter turnout was 30 percent for municipal elections with a mayoral contest and 20 percent in other municipal elections. Since imposition of the per person campaign limits, turnout has plummeted from 30 to 15 percent for mayoral elections and other municipal elections command no more than 14 percent turnout and often drop as low as 7 percent.</p>	Passed 72 to 28 percent
2002	5%	<p>“Austin Fair Elections”: would have created a public financing system for City of Austin Council candidates, providing block grants as well as \$2 in public financing for every \$1 raised, and other regulations. The city’s estimate for the cost per election was \$1.6 million and \$230,000 per year to administer.</p>	Failed 26 to 74 percent
2006	5%	<p>“Open Government”: would have required an online communications systems where city officials and employees immediately report details of every phone call and every meeting, including meals and happy hours, by posting the information on the city web site in real time. The city’s estimate for the cost to implement the system was \$36 million; estimated cost per day to maintain the system was \$33,000.</p>	Failed 23.53 to 76.4 percent
2006	5%	<p>“Clean Water”: would have limited infrastructure and growth throughout Austin.</p>	Failed 30.9 to 69.1 percent
2008	5%	<p>“Stop Domain Subsidies”: forces the City to break its word for projects they agreed to previously and would affect both the Domain and Mueller redevelopment projects. The proponents of the charter amendment are offended by financial incentives provided to a retail project in 2002, i.e., The Domain. The issue for retail projects was fixed in 2007 when the Austin City Council amended its Economic Development Policy and Program for future economic development agreements not allowing future financial incentives.</p>	Failed 52 to 48 percent

The Real Estate Council of Austin
98 San Jacinto Blvd. Suite 510 ■ Austin Texas 78701 ■ Phone: 512-320-4151
www.recaonline.com