

THE FIGHT AGAINST SB4: A LOOK AT HOW THE CITY OF SAN MARCOS AND
LOCAL ACTIVISTS RESPONDED TO THE ANTI-SANCTUARY CITY LAW

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ABSTRACT

In 2017, the Texas Legislature passed what has been called the toughest anti-immigration bill in the country – Senate Bill 4, also known as the anti-sanctuary cities law. Several cities, including Austin and San Antonio, joined a lawsuit against the bill, but the City of San Marcos did not. This thesis will tell the story – drawing on over 500 emails from city officials and interviews with activists – of how the city went from voting unanimously against joining the lawsuit against SB4 to voting unanimously to file their own amicus brief against SB4 a week later. It will examine the timeline between when activists first began lobbying for city support for the lawsuit to when city council filed the amicus brief.

I - SETTING THE SCENE

Legislative session after legislative session pro-immigration activists in Texas have watched what they describe as “anti-immigration” bills pass down the pipeline only to be stopped one way or another before becoming a law.

The 85th legislative session, which started January 2017, was different. Activists from Mano Amiga, a San Marcos based pro-immigration activist group, knew in light of the 2016 president election – when Donald Trump won the presidency with “anti-immigration” rhetoric as part of his campaign platform – the Republican controlled legislature was likely to fight harder to pass their legislation.

During his campaign, Trump called for an end to illegal immigration, a border wall and referred to Mexican immigrants without documentation as “rapists” and “bad *hombres*” (Ross, 2016).

Just four days after the presidential election on Nov. 8, 2016, Republican Senator Charles Perry, from the Lubbock area, filed Senate Bill 4, a bill that attempted to end so called “sanctuary cities,” to be heard in the Texas Legislative session (Ward, 2017).

Sanctuary cities or counties limit their cooperation with federal immigration enforcement authorities to protect low-priority immigrants without documentation (immigrants who have committed low-level crimes, such as traffic violations, and are not wanted by the federal government for more serious crimes, such as rape or murder).

The law, which had the support of Texas Governor Greg Abbott from the start, sent shock waves through San Marcos, according to Karen Muñoz and Jordan Buckley of Mano Amiga, a San Marcos based immigration group.

This thesis tells the story of how activists fought against SB4 for almost six months by urging city council to join a lawsuit against the law. It also tells how the City of San Marcos declined to support the lawsuit until public pressure and media attention drove the council to reverse their vote one week later and file an amicus brief in support of the lawsuit.

The story below focuses on the activists, but is corroborated by more than 500 emails received through a Texas Public Information Act request and dozens of media reports from the time. There were potentially thousands or more emails from the city that were not received because the city asked that the request be narrowed from all city staffers or elected officials to a targeted group of individuals. Also, the city claimed they were not open records due to attorney-client privilege.

I requested interviews with all city councilmembers, the police chief and the city manager through the city on two occasions, but the city's media relations office failed to produce these officials and were largely unresponsive.

II- GATHERING COMMUNITY SUPPORT

In February 2017, Karen Muñoz heard about Immigration and Custom Enforcement raids in Austin and sent Jordan Buckley a text message asking what they would do if ICE came to San Marcos.

The pair are activists in San Marcos, friends and members of several politically active groups around the city, including the First Unitarian Universalist Church and the San Marcos Cinema Club.

They decided to rally other activists, about 20 people who formed Mano Amiga – a San Marcos based pro-immigrant activist group, and held know-your-rights training sessions for immigrants in the community. They also set up a hotline to share information with callers such as how to find resources, obtain legal advice, or share rumors of potential riots (Plohetski, 2017).

In the meantime, SB4 was moving through the legislature. Though there was still fierce opposition from many Democrats and activists, Muñoz and Buckley knew by early spring that it would pass.

The bill was signed into law on May 7. The League of United Latin American Citizens filed a lawsuit against the law on May 8.

Mano Amiga started a Loyal and Local Program, where businesses would display a sign within their window stating they stood against SB4. The pair wanted to show that the San Marcos business community was in favor of the city joining the lawsuit.

“It felt like (joining the lawsuit) was especially important because we're not near a border and we're not a large city,” Muñoz said. “So, it would be impactful (for) our city that's not the bluest and not the most known.”

In May, Muñoz and Buckley successfully recruited 20 businesses to join the campaign and display signs. After that, other businesses emailed them to offer support. After about 50 businesses joined – including Gil's Broilers and Rhea's Ice Cream in downtown San Marcos – they turned their attention to a petition that received over 750 signatures.

Buckley and Muñoz, who is actively preparing to run for a city council position in the next election cycle, know most of the city councilmembers personally. They began reaching out to the six councilmembers and the mayor to discuss SB4.

In June, Buckley said in an email to City Councilmember Lisa Prewitt that five out of the seven councilmembers had expressed their opposition to the bill. The other two, Scott Gregson and Melissa Derrick, he had been unable to reach.

“Councilmembers would talk to us and answer our emails but none of them were like, ‘Yeah you guys are right; let’s do this,’” Buckley said.

They were aware that the lawsuit would be an uphill battle. Mano Amiga made it clear from the start, per several emails, that they wanted the city to join the lawsuit, but would settle for the amicus brief.

“A town that has really fucked up race politics and that even now whites comprise (40)¹ percent of the population and yet very few times in our city’s history have we had more than one person of color on our city council at a time,” Buckley said. “So, in the backdrop of historically fucked up race politics, it would be very challenging.”

The other reason Buckley said he was worried was because he felt immigration was new to the Democratic platform. He referenced tough immigration laws passed by the Obama administration to make his point. The council is nonpartisan, but it is generally believed that most, if not all, of the council identify with the Democratic Party.

They decided to bring in various Democratic politicians around to the state to prove that immigration had become a central part of their platform and to give credence to Mano Amiga’s seriousness.

Buckley ran in to Austin Mayor Steve Adler at the Texas State Capital during the early summer and asked him to speak with San Marcos Mayor John Thomadies. Adler agreed, according to Buckley.

Muñoz had breakfast with Thomadies and Gloria Salazar, another member of Mano Amiga and program coordinator for Centro Cultural Hispano de San Marcos, to inform him of Adler’s offer.

Later, a councilmember that Muñoz did not name, told her that Thomadies said he had “no intention of speaking to Adler.”

Adler confirmed to the activist that he had not heard from Thomadies.

Muñoz confronted Thomadies in an email that was sent to the entire council June 27 in which she told him she would be writing a column for the San Marcos Daily Record about his failure to follow through on his promise.

¹ Buckley said 49 percent, but according to the 2011-2015 American Community Studies the percent is actually 40.

A same-day email from City Clerk Jamie Lee Case stated, “I just spoke to the Mayor and he is rather disgruntled over this topic since he received the email” about Muñoz’s accusation. It also said that Thomadies wanted to explore community outreach possibilities.

“Mayor Thomadies was fighting us this whole time behind the scenes and acting like his hands were clean, but we called him out,” Buckley said.

In June, Greg Casar, an Austin city councilman, came to San Marcos and held a news conference about the issue. This was shortly after Austin joined the lawsuit but months before San Marcos’ council even put the vote on their agenda.

The pair also brought in Joaquin Castro, a Texas Representative from San Antonio, who held a news conference the day before the vote to speak out against SB4.

Muñoz claimed that two councilmembers showed up to the news conference to get a photo with Castro, a rising star in their perceived political party, then left without hearing the rest of the speakers. The news conference was held the same day as the vote, Aug. 15.

III - MOVING BEHIND THE SCENES

It was not just one issue the activists had to overcome that summer. To them, the obstacles were endless.

Despite rallying local and party support, they seemed stuck in a rut with the council. They had trouble getting to a few councilmembers to discuss the topic. They also had difficulty getting the council to put a discussion about the lawsuit on the agenda.

Another problem that arose for the activists was the city’s interpretation of the Open Meetings Act. According to Buckley and Muñoz, about halfway through the summer they received a warning from the city attorney that only three city councilmembers could speak to them about the same subject without violating the Open Meetings Act, even if they were not physically present at the same time. This is different from how most cities interpret the law.

Muñoz said this inhibited them from advocating for their position with at least three members on the law.

“I think an injustice for the entire system here is that the way our city attorney interprets the open meetings act,” Muñoz said.

Muñoz claims they tried to get the vote about the lawsuit on the agenda several times. She said one city councilmember, who appeared to be Ed Mihalkanin based on his emails at the time, promised to schedule the vote, but failed to follow through on his promise.

The emails actually showed that he pushed to add it to the agenda in August, but there was no indication he tried earlier in the summer.

Muñoz said she had requested to put the vote on the agenda through the city clerk's office multiple times, but based on more than 500 emails received through a Public Information Act request, it appeared that she only requested it once.

There were issues with communication from the city, as well. Police Chief Chase Stapp originally told Muñoz that he was against SB4 and privately supported the lawsuit. However, he said he would not support it publicly until the city filled the city manager vacancy, since the manager would be his boss.

When the city had narrowed the candidates, Muñoz and Buckley spoke to each about their position on the lawsuit. All of the candidates said they supported it, including Bert Lumbrellas, current city manager, according to the activists.

Muñoz emailed Stapp and pushed him to make a public statement. From her perspective, it seemed that he had stopped responding to her. The next message she received on the subject was from Kristi Wyatt, then-communications director for San Marcos.

Stapp had actually drafted a letter to Muñoz stating that he could not make a stand without the city council. He sent the letter to Wyatt first and said, "I have no interest in sending that letter to Karen if the Mayor and council do not approve," according to an email from July 23.

The letter was passed around the communication office, the city manager's office, and the city attorney's office. Eventually it was shut down and Wyatt reached out to Muñoz on Stapp's behalf to inform her that he would not be speaking with her on the subject.

Another issue Thomadies wrestled with, according to Muñoz, was his fear that the city might be fined for joining the lawsuit. There was a clause in the bill that would allow the state to personally fine or remove opposing city officials from government if they did not comply with the law.

While Austin and San Antonio were joining the lawsuit, San Marcos was outwardly silent on the issue.

However, the emails show that most of the councilmembers were engaging with the topic in some capacity. Many of the councilmembers were receiving frequent news alerts about SB4 and several were requesting updates from Michael Cosentino, city attorney, or Kristi Wyatt, then-communications director.

At some point, it became clear that at least one councilmember had asked city staff to research what the financial burden of joining the lawsuit could be. They were not referring to the cost of joining the suit, which would have been covered by LULAC, but

to state and federal funding that could have been pulled from the city it was as seen as uncooperative with the law once it went into effect.

Heather Hulbert, city director of finance, sent an email to the council letting them know that \$1.9 million in state grants and \$3.4 million in federal grants would potentially be in jeopardy.

It also became clear that the mayor had requested a police report to “support our side,” per an email from Steve Parker, assistant city manager, though the email does not explain if this means he was for or against joining the lawsuit or filing the brief.

The report, compiled by Police Chief Stapp, suggested that the police department did not mistreat Hispanic citizens during traffic stops. There was no indication from Parker, who delivered Stapp’s report to the council, if this helped or hurt Thomadies’ point of view.

Thomadies, according to the Muñoz, said he was worried this prevented the city from speaking out about the law, though the law did not go into effect until Sept. 1.

“Mayor Thomadies somehow expects us to believe the legal teams of Dallas, Houston, El Paso, San Antonio, Austin, Laredo, McAllen — in addition to lawyers for numerous sheriff’s departments and police chiefs the state over — are wrong, and his lawyer is right?” Mano Amiga wrote in a column in the San Marcos Daily Record Aug. 20. “That’s as ludicrous as it is shameful and pathetic.”

When the vote about the lawsuit did occur, it happened in executive session. Derrick later told Muñoz and several individuals in an email that she was confused by the executive session. Muñoz said at least one councilmember told her that they believed they had to come out of executive session with a unanimous vote.

“You could have been a community savior at six to one,” Muñoz said, referring specifically to councilmembers who told her they felt pressured to present a united front.

IV - VOTING – THE CITY COUNCIL’S ACTIONS

The first vote happened Aug. 15 in executive session. The first person to mention executive session was Chase, the city clerk, in an email. In the meeting, Gregson put the motion forward for executive session. The council emerged and revealed a unanimous vote not to join the lawsuit.

Thomadies listed several reasons why the city did not join the lawsuit including the fear that the city would be fined for speaking out once the law went in to effect and the fear that ICE would retaliate by targeting the San Marcos community in future raids.

The activists said they expected the vote to join the lawsuit against SB4 would not pass, but they felt hurt and betrayed when it was shot down unanimously.

“I want to run for city council, so especially the women on council to me it was like, ‘how dare y’all,’” Muñoz said.

As soon as the meeting was over Muñoz, Buckley and other activists sat in a circle outside of City Hall and penned a column that ran in the San Marcos Daily Record on Aug. 20, with the headline, “Council exhibits cowardice by consensus.”

“They used lies (and) distortion to justify their spineless decision, insultingly employing thoroughly disproven arguments and a spectacularly rare legal interpretation that, would you believe it, enable them to sit on the sidelines while Texas cities all around us rise to this moral crisis by taking a stand for immigrants and people of color in their communities,” they wrote.

“At least for me what I took away is that people who called themselves liberal, if they’re white, they still might not listen to issues that concern people of color despite their progressive badge,” Buckley said.

Council was immediately inundated with emails from residents. Most of them asked the council to reverse their vote or file an amicus brief. There were a handful that praised them for their action.

At some point, council began talking about a special council meeting to discuss an amicus brief. Mihalkanin approached Buckley at a local live music event and told him he wanted to have a special council meeting at a time when working individuals would be able to attend. At least three councilmembers expressed this wish in email correspondence with the city clerk, but it was scheduled for 8 a.m. on a Tuesday regardless.

“If our city council were to meet early in the morning, like at 8 a.m., it would come across as the council trying to sneak something past our fellow San Marcans,” Mihalkanin wrote in an email to the city attorney and manager Aug. 18. “SB 4 is such an important issue, we should be as open as possible about our decision(s) on it.”

Still, people showed up in droves to that meeting. The room was packed. Each councilmember read a statement with their vote. They voted 7-0 to join the lawsuit.

Muñoz and Buckley said the narrative the city tried to play off was that they had chosen to do the amicus brief after careful consideration because they decided that was what was right for the city. In actuality, Muñoz and Buckley said they had pushed for the amicus brief all summer and they believed that the initial vote against the lawsuit was also against the brief.

Because the executive session notes are sealed, there is little to verify this, except one email from Derrick. Buckley sent an email Aug. 21 to an Austin American-Statesman reporter saying, “Councilwoman Derrick is down to acknowledge that council vote on amicus last week failed in executive session; she’s copied here.”

Derrick responded that she had received legal counsel and had since realized she was wrong when she told Buckley she had voted for an amicus brief in the first meeting; rather, she said, she had just spoken in support for one.

This email is important because it appeared to verify that the council discussed an amicus brief at the time of the first vote. Without the sealed minutes from the executive session, it was difficult to know why they did not file one in that moment. However, it appeared to support Muñoz’s and Buckley’s claim that the brief was not part of council’s plan until they saw the reaction of their constituents.

They said they felt the council scrambled to throw the brief together after receiving so much opposition from their constituents.

“They tried their damndest to spin the thing off, ‘Oh no, we didn’t want to do litigation the first one but the second round we’re going to do amicus’,” Buckley said.

Muñoz added, “It still makes them look like saviors.” Buckley replied that it did, and in his view, it was a lie.

Muñoz said at least three councilmembers individually apologized to her for their behavior surrounding the first vote.

“I still don’t even appreciate apologies because, like, be a better councilmember,” Muñoz said.

VI - LOOKING FORWARD

In the Aug. 20 column, Mano Amiga wrote that they had picked up two packets with information about applying to city council. One was for Muñoz.

“We are excited to see Muñoz on council,” Buckley said.

U.S. District Judge Orlando Garcia ruled on which parts of the law could go in to effect while it went through the court system on Aug. 31, one day before it would have gone in to effect. He heard a wide range of arguments against the bill – from claims that it violated the First and Fourth amendments to claims that the law was racist and would cause an extra burden on police departments.

Garcia blocked much of the law including portions of the law that required local government to comply with all ICE detainers and to assist ICE when reasonably

necessary. He allowed provisions that made it possible for law enforcement to ask for proof of residency at a traffic stop (Texas 'sanctuary cities' law goes before 5th Circuit in New Orleans, 2017).

Cosentino said the judge's decision referenced language from his brief, suggesting that it had been read and used by the judge.

The law then went in before the Fifth U.S. Circuit Court of Appeals on Nov. 6. They ruled to allow the detainer provision previously blocked by Garcia (Aguilar, 2017).

On Nov. 7, both parties were back in court to argue whether the bill prohibited the First Amendment rights of individuals because of a clause that restricted law enforcement from speaking out against the bill in an official capacity.

For now, most of the law is in effect, save the clause that requires local law enforcement to assist ICE, but both activists and Texas government are still waiting while the lawsuit moves the court system – the former hoping to block more of the law, the latter to prove it is entirely constitutional and allow it to go into effect in its full form.

Until then, Mano Amiga is working on improving conditions for immigrants in the city, and fighting for immigrants that are detained by ICE.

San Marcos and the other cities that filed an amicus brief or joined the lawsuit will have to wait until 2018 – or longer – to find out the fate of the law.

BIBLIOGRAPHY

Aguilar, J. (2017, September 25). Appeals court allows more of Texas "sanctuary cities" law to go into effect. *Texas Tribune*.

Plohetski, T. (2017, February 16). Austin No. 1 in U.S. — for non-criminals arrested in ICE raids. *Austin American-Statesman*.

Ross, J. (2016, October 20). From Mexican rapists to bad hombres, the Trump campaign in two moments. *Washington Post*.

Texas 'sanctuary cities' law goes before 5th Circuit in New Orleans. (2017, September 22). *Associated Press*.

Ward, K. (2017, January 06). Texas Governor Pledges to Sign Anti-Sanctuary City Bill. *The Daily Signal*.