TEXAS GOVERNMENT



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Texas Government

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1: POLITICAL CULTURE AND THE PEOPLE OF TEXAS

Learning Objectives

After reading this chapter, you should be able to:

- Outline the political history of Texas.
- Analyze the political culture of Texas.
- Describe the geography of Texas and the politics of each region.
- Identify the major industries that have shaped Texas.
- Examine the diversity of the people in Texas.

Texas Proud—being a Texan is a way of life, and people from other states just do not understand.

The state is big. People in Texas do not talk about the number of miles from one city to another; they talk in terms of hours. It will take twelve hours to travel from north to south or west to east across the state. It is about an hour from Austin to San Antonio or five hours from Houston to Dallas. No one likes to take road trips in Texas more than Texans, particularly in the spring when the bluebonnets, the state flower, are in bloom **(Figure 1.1)**.

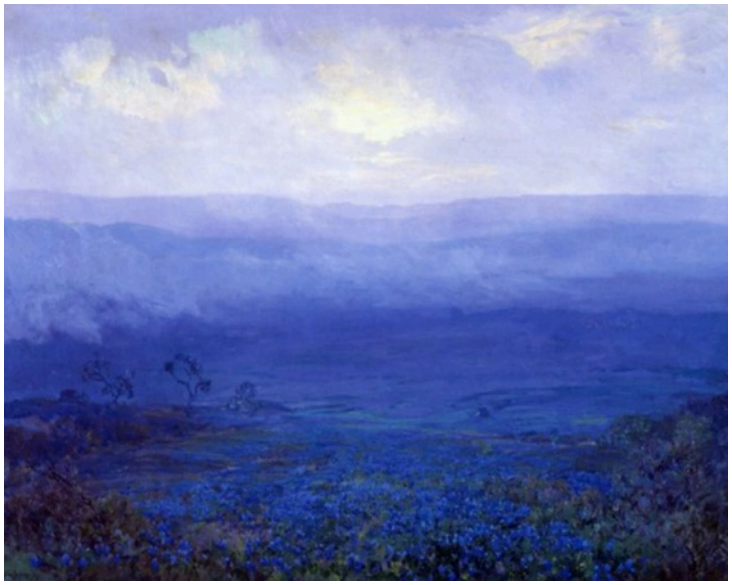


Figure 1.1: Bluebonnets in Texas. SOURCE: Julian Onderdonk CC BY 2.0,

It stands to reason that people from such a big state will also like big things. Texans like big hats, big trucks, big monuments and a big Capitol. For example, the Texas Capitol is taller than the U.S. Capitol, and the San Jacinto monument (located on the Houston Ship Channel and erected to commemorate the victorious battle when Texas won its independence from Mexico) is thirteen feet taller than the Washington monument in Washington, D.C.

Texans are proud of the lone star on their flag, which has flown over the Lone Star State since it became the Republic of Texas in 1836. It is a reminder of those ten years when Texas was its own nation, and its fiercely independent streak. Texans can fly their flag at the same height as the U.S. flag, another fact that people outside Texas do not understand. People in Texas will use the lone star or the shape of Texas to make everything from waffles to cookies to stepping-stones.

We have our own iconic foods in Texas. You can eat some version of Tex Mex all day long, from a breakfast burrito in the morning to fajitas for dinner, and don't forget the chips and queso. We've got pecan pie and Blue Bell ice cream. Chicken fried steak—with cream gravy. Barbecue, which is an all-day event resulting in mouth watering brisket, ribs, sausage, chicken, and more. The official dish of Texas is chili, the hotter the better, and there are weekend-long competitions to perfect the best recipe.

Football is also serious business in Texas, and the devotion to the sport starts young. There are high school football stadiums that could be compared to some professional stadiums. Although fictional, the films Friday Night Lights and Varsity Blues just about sums up how seriously Texans take the sport.

Students in the public schools start taking Texas history in kindergarten and keep at it through high school. Most Texans can tell you that Sam Houston was the first president of the Republic of Texas, and that the state bird is the mockingbird.

We say, Yes, Ma'am and Yes, Sir.

We claim Austin City Limits, television's longest-running music series, and those who hail from Texas, like Beyonce and Selena Gomez.

We have Texas Longhorns, horned toads, armadillos, and monarch butterflies.

"Friendship" is our state motto, and true to the motto, Texans are friendly. Hospitality is extended to everyone. We want people to come over and come back.

In short, we take pride in our state. This chapter will give you an overview of the state of Texas and set the stage for the rest of the book

1.1: Brief Political History of Texas

1.2: Political Culture of Texas

1.3: Geography of Texas

1.4: Industries That Shaped Texas Politics

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1.1: Brief Political History of Texas

The early ancestors of modern American Indians in Texas lived approximately 37,000 years ago and survived primarily on wild game. In East Texas, more permanent villages were established by the American Indians and federations were formed for mutual protection. They came to be known as the Caddo confederacies and farms developed along with political and religious systems. These American Indians would certainly exert influence on the history of Texas when the first Europeans arrived in 1528. The Caddos are credited with giving Texas its name which is a derivative of the Caddo greeting—"Tay-yas" or friends. Remember, the motto of Texas is "friendship".

During the early 1700s, the Spanish sent more than thirty expeditions into Texas. San Antonio had a military post and a mission (the Alamo). Missions were also established in Nacogdoches to the east, Goliad in the south, and El Paso in the west. Moses Austin received permission from the Spanish government to settle 300 families on a grant of 200,000 acres. After Mexico won its independence from Spain in 1821, Stephen F. Austin (the son of Moses) received approval of the grant from Mexico **(Map 1.1)**. By 1832, his colonies had about 8,000 people.



Map 1.1.1: Map shows early nineteenth century Mexican cities, states, and territories (inclusive of Texas), Santa Fe Trail, Missouri Territory, and Arkansas Territory. Includes table of government administrative divisions before 1824 and notes. SOURCE: Wyld, James, 1812-1887. Republic of Mexico., map, [1829..1836]; London, England University of North Texas Libraries, The Portal to Texas History.

When Antonio Lopez de Santa Anna assumed the presidency of Mexico, Texans supported him. When Stephen F. Austin traveled to Mexico to address the government about restrictive government grievances, he was met with imprisonment. By the time he returned to Texas in 1835, skirmishes had already broken out among the colonists and the Mexican troops. Texas declared its independence at Washington-on-the-Brazos in 1836. The Battle of the Alamo lasted from February 23 to March 6, 1836, before all of the defenders inside the Alamo were killed. Sam Houston, the military commander, led a surprise attack on the Mexican troops at the battle on the San Jacinto River, capturing Santa Anna and securing victory for Texas. Now the Republic of Texas, Sam Houston became president and Stephen F. Austin became secretary of state. Houston became the capital of the republic until it was later moved to Austin as the permanent capital. The Republic struggled both financially and with the constant threat of American Indian attacks. The U.S. wanted to continue expanding to the west, so the U.S. and Texas agreed to annexation in 1845, and fortunately Texas managed to retain title to its public lands.

After annexation, disputes over boundaries led to the Mexican-American War with U.S. troops capturing Mexico City. Mexico gave up its claim to Texas and other areas in what is now lands in New Mexico, Utah, Nevada, Arizona, and California with the Treaty of Guadalupe Hildago which was signed on February 2, 1848. Texas claimed most of that land but relinquished it in the Compromise of 1850. This was a series of bills passed by Congress to help settle disputes between the slave and free states as the U.S. expanded westward and continued to claim new territory. It also set the current northern and western boundaries of Texas. More disruption occurred with the onset of the American Civil War. Texas joined the Confederacy in 1861 and then rejoined the Union in 1870 after losing the war. The Reconstruction period after the war brought a political atmosphere of distrust of government in

general. When Texans wrote the constitution of 1876 under which we are still operating they took care to ensure limitations on all three branches of government. As stated in Article I, Section 2 of the 1876 Texas Constitution:

> All political power is inherent in the people, and all free governments are founded on their authority and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and subject to this limitation only, they have at all times the inalienable right to alter, reform, or abolish their government in such manner as they may think expedient.[1]

There is no doubt that a limited government was the preference, not only in 1876 but today as well.

Before the close of the nineteenth century, the population of Texas grew as did the economy. By 1900, the population was more than three million people. The Comanche were moved out of Texas to a reservation in Oklahoma. New immigrants arrived and towns were established. The cattle industry and farming spread from Central Texas to West Texas. And, of course, in 1901 when the oil gusher of Spindletop outside of Beaumont was discovered, the oil industry took off and more jobs were created. Even today, cotton, oil and cattle are major industries.

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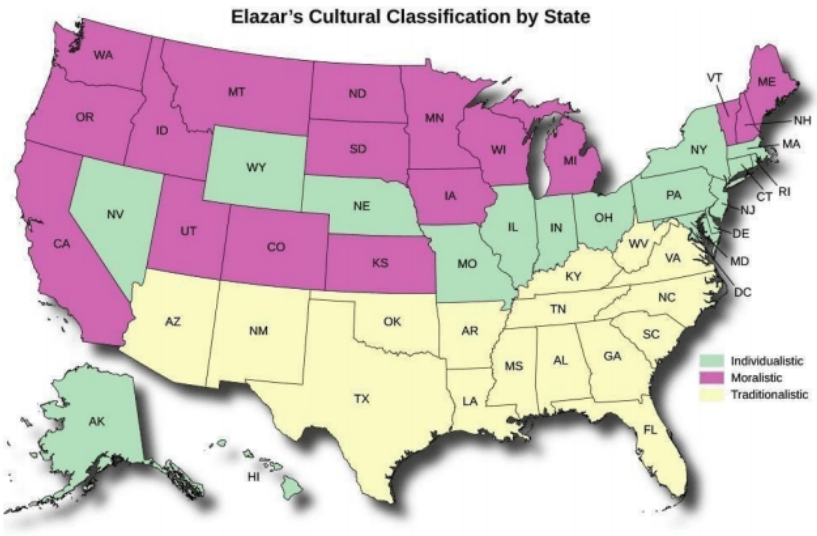
1. Texas Const., art I, § 2.

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1.2: Political Culture of Texas

Political culture refers to broadly shared values, beliefs, and attitudes about how the government should function. Shared American values include the values of liberty, equality and democracy and these are central to Texas values as well. However, cultural differences between the states can and do shape attitudes about the role of government and there are noted differences.

Daniel Elazar, in his book, *American Federalism: A View from the States*, divided the country into three political cultures: moralistic, individualistic, and traditionalistic. He explained that as the early settlers migrated across the country, they took with them their ideas about the role of government and their religious beliefs. Each of these groups had their thoughts about the role of government, citizen involvement and the role of political parties. One can see the migratory patterns of the three different groups in **Map 1.2.2**.



Map 1.2.2: Elazar's Cultural Classification by State. Daniel Elazar posited that the United States can be divided geographically into three types of political cultures—individualistic, moralistic, and traditionalistic—which spread with the migratory patterns of immigrants across the country. SOURCE Texas Government 1.0.

Moralistic Political Culture

The moralistic political culture developed among the Puritans who settled the New England colonies in the seventeenth century saw government as a means to better society and promote the general welfare. In America, they intended to create "a city upon a hill," as Puritan leader John Winthrop put it, so that the world could see their righteousness.[2] New England reflected the Puritan culture, promoting government as a means to improve society in the same way that Puritans embraced a lifestyle of pious, consecrated actions. As generations passed, the settlers continued westward all across the northern boundary of the U.S. Immigrants from Northern Europe and from the Scandinavian countries shared Puritan values and joined with them as they continued through northern portion of the Midwest and finally along the West Coast.

The **moralistic political culture**, citizens expect their elected officials to be honest and to put the needs of the people they served above their own interests. This culture puts a positive spin on the political process, believing they are working to better their community rather than profiting financially from their service. They would embrace the idea of bigger government and creating new programs to solve the problems of the society.

Political engagement and citizen participation is expected from the citizens. In this society, citizens would relish donating their time and their resources to elections and it would be their duty to turnout to vote. According to Elazar, there are two reasons for this. First, states should make it easy for the citizens to register to vote and then actually vote because it was the right thing to do. Second, they expected that elections would be contested with competition in each of the races. Therefore, it was an honor to participate and it was a worthwhile endeavor. Elazar also believed that in a moralistic culture, those running for public office

would do so because of their qualifications, not party loyalty. They certainly would be more open to third parties. Supporting the community was more important than supporting the party.

Individualistic Political Culture

According to Elazar, the individualistic political culture originated with settlers from non-Puritan England and Germany. The first settlements were in New York, Pennsylvania, and New Jersey eventually spreading to the middle portion of the United States from Ohio straight to Wyoming. As the name implies, government in this culture should address the issues that matter to us as individuals. Government is expected to provide needed services and in return, the officials would be compensated for these efforts. It is no longer about serving the community as a whole but rather meeting the interests of individuals. Once government receives support from the voters, then they serve the needs of those individuals.

In this culture, citizens will get involved and participate only if they have a personal interest or if they expect certain benefits from government. Many times the citizens will expect some type of reward such as a political patronage appointment, perhaps even with financial compensation. Politics is not seen as a noble profession as in the moralistic culture. Citizens are much more tolerant of corruption in their political leaders in this culture. They are not necessarily looking for candidates with great ideas, but only remain loyal to the candidates with the same party affiliation as themselves. Candidates running for political office outside the mainstream political parties find it difficult to find success in this individualistic environment.

Traditionalistic Political Culture

Elazar associates traditionalistic political culture with the southern portion of the United States, where it developed in the upper regions of Virginia, the first of the southern colonies. It then spread to what we refer to as the Deep South (Georgia, South Carolina, Alabama, Louisiana, Mississippi) and on into the Southwest. Slavery was prominent in these states so government was necessary to maintain the existing social order, the status quo. The elites would dominate politics, so any new policies would reinforce the interests of those in power.

In this **traditionalistic political culture**, voter turnout tends to be lower, in part because there may be more barriers to participation. History has shown us that the southern states have more consistently reduced voter turnout by the use of tactics like poll taxes (fees charged for voting), among others, to diminish the minority vote. Today, barriers to voting could include the requirement to produce a photo ID at the time of voting. Voting in a traditionalistic political culture was considered more of a privilege for those that met the qualifications. Competition will be between the factions within the dominant party. Between the 1870s and the 1970s, the Democratic Party dominated Texas state politics and the competition was between the urban and rural Democrats. After the civil rights movement and the Republican realignment that took place in the South, Republicans are the dominant party in Texas today. Now, the competition is between the moderate and the far right Republicans.

Texas Political Culture and Elazar's Theory

These cultures can and do co-mingle, of course. Elazar's theory claims that Texas is a mixture of traditionalistic and individualistic political cultures. So, if the individualistic political culture focuses on individual achievement—think lonesome cowboy out on the range getting the job done to the best of his ability—then government activity should focus on opportunities for individual achievement. The traditionalistic political culture represents the Southerners who migrated to East Texas and brought the values of a hierarchical society with traditional moral values and discourages government activity except to keep the power in the hands of those dominant groups. Both of these cultures describe Texas today—a conservative state with little governmental interference in the economy, keeping our taxes low, and spending little. But we must also recognize the tension between the two cultures. While individualistic political culture stresses individual freedom with little government intrusion, traditionalistic political culture promotes the values of the traditional social order.

Texas political culture currently prizes itself on being pro-business, with low government regulation, and having no state income tax, in keeping with both traditionalistic and individualistic cultures. It has also historically been characterized by low voter turnout, lower than most other American states––with the argument that Texans view political participation as an economic perk versus the value of contributing to society. Texas is also a state with a history of voter suppression of minorities.

However, in 2018, the senatorial race between Republican Ted Cruz and Democrat Beto O'Rourke brought a record turnout of almost eight million people in a non-presidential election year.[3] Compare this to only 4.6 million people that turned out in 2014.[4] There was speculation that Texas would see more competition between the political parties in future elections, and even

that a Democrat might win in a national election in Republican Texas. In 2020, sixty-six percent of Texas's registered voters participated—the highest voter turnout Texas since has since 1992 when two Texans were on the ballot, H. Ross Perot and George H. Bush; seventy-three percent of eligible Texans voted that year.[5] As a point of comparison, the national average in 2020 was 66.3 percent, with the highest state turnout in Minnesota at nearly eighty percent and the lowest state turnout at a little less than fifty-five percent in Oklahoma.[6] Finally, Texas was closer to the national average.

The division of power between federal, state, and local governments, known as federalism, gives states the ability to set up its own governmental structures, determine how elections will be conducted and which policies they choose to prioritize. In other words, it allows states the ability to set up a government that suits the culture within the respective state. There is no reason to believe that Texas government should be set up like the government of New York. While Elazar's contribution is still widely accepted, there is a new description of culture emerging that takes into consideration economic and social changes. There have been societal and demographic changes that have taken place. Immigrants are no longer coming primarily from Europe, but also from Asia and countries to our south. In Texas, we also have people moving here from other states with different political cultures, primarily California, New York, and Illinois. We now live in a highly mobile society where people choose their residence based on factors that suit their lifestyles. This new political culture sees cities that are more socially diverse and more tolerant of non-traditional lifestyles. Texas may be changing, and it will be interesting to see how these new factors affect political culture, but when thinking about the political culture of Texas, keep in mind that changes take place over time.

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2. John Wintrhop. "A Modell of Christian Charity (1630)." From the Collections of the MA Historical Society (Boston, 1838), 3rd series 7:31-48).
3. "Turnout and Voter Registration Figures (1970-current)," Texas Secretary of State, Ruth R, Hughes, https://www.sos.state.tx.us/election...al/70-92.shtml
4. "Turnout," https://www.sos.state.tx.us/election...al/70-92.shtml.
5. Shannon Najmabadi and Mandi Cai, " Democrats Hoped High Turnout Would Usher in a Blue Wave across Texas. It Didn't," Texas Tribune, Nov. 4, 2020, https://www.texastribune.org/2020/11...out-democrats/
6. Kevin Schaul, Kate Rabinowitzm and Tec Mellnik, "2020 turnout is the highest in over a century," Washington Post, Nov. 5, 2020, upd. Dec. 28, 2020, https://www.washingtonpost.com/graph...voter-turnout/

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1.3: Geography of Texas

Second only to Alaska, Texas occupies about seven percent of the total water and land area of the United States. The total area of Texas includes 261,232 square miles of land and 7,365 square miles of water. The land and water area of Texas is as large as all of New England, New York, Delaware, Pennsylvania, Ohio, and Virginia combined. It is 801 miles from the northwest corner of the Panhandle to the southern tip of Texas on the Rio Grande River. Traveling from west to east, you would travel 773 miles. Think of it like this—Austin is closer to New Orleans than it is to El Paso and San Diego is closer to El Paso than Houston is. The Rio Grande River travels 889 miles from El Paso to the Gulf of Mexico along the border with Mexico and Texas has 367 miles of beaches on the Gulf of Mexico (**Figure 1.3.2**).



Figure 1.3.2: Texas Gulf Coast. SOURCE:Travel Texas.

In Guadalupe Mountains National Park in Culberson County, Guadalupe Peak is the highest point in Texas at 8,749 feet and next to it stands El Capitan at 8,085 feet above sea level (**Figure 1.3.3**). It is also home to scenic McKittrick Canyon, which draws hikers from all over Texas. In the nearby Davis Mountains in Jeff Davis County, Mount Livermore, also known as Baldy Peak, rises 8,378 feet. The highest town in Texas is Fort Davis in Jeff Davis County at 5,050 feet. The highest highway is also in Jeff Davis County at the McDonald Observatory on Mount Locke at 6,781 feet and the highest railway is in Presidio County at 5,074 feet. Sea level is the lowest point in Texas and can be found in all of the coastal counties. As is often said, Texas is a land of contrasts.



Figure 1.3.3: El Capitan at Guadalupe Mountains National Park. SOURCE: National Park Service/D. Buehler.

The Physical Regions of Texas generally include the Gulf Coastal Plains, the Interior Lowlands, the Great Plains, and the Basin and Range Province (**Map 1.3.3**).



Map 1.3.3: Physical Regions of Texas. SOURCE: Texas State Historical Society, Texas Almanac 2020-2021.

Gulf Coastal Plains

The **Gulf Coastal Plains** extend from the southernmost tip of Texas to the Red River in the north bordering Oklahoma and east to the Sabine River, bordering Louisiana. The western boundary is the Balcones Fault and Escarpment, a geologic fault extending from a point on the Rio Grande at the city of Del Rio traveling northeast to Bexar, Comal, Hays, and Travis counties joining the Colorado River in Travis county. This fault line is a single geologic feature with southward and eastward facing hills that resemble balconies. The Spanish word *balcones* means balconies so that is the origin of the name. North of Waco, the fault zone is inconspicuous. Within the Gulf Coastal Plains are six diverse subregions, including the Pine Belt, Post Oak Belt, Blackland Belt, Coastal Prairies, Lower Rio Grande Valley, and Rio Grande Plain.

Pine Belt

The Pine Belt, called the *Piney Woods*, runs along the eastern border of Texas with Louisiana from the Red River in the north to the Gulf of Mexico in the south. The area was settled early in Texas history and is one of Texas's oldest farming areas. Its temperate climate and sandy soil produce fruits and vegetables. This is also the location of practically all the commercial timber production in Texas. In addition, cattle is important to the region as well. In the 1880s, John A. Caplan remembered the area around Polk and Hardin counties as an uninhabited area of "tangled underbrush and tall trees":

> There is one continuous dense growth of tall pines, oaks, magnolias and numerous other forest trees. . . . In many places, we have to get down on our hands and knees to crawl through the thick, dose knitted growth of bay, gall bushes, and cane brakes. Not a human being can be seen for miles. Not a voice is heard except our own; and when we pass a grove of pines, the moaning of the wind makes us feel as if Judgment Day was about to come.[7]

The Big Thicket is considered one of the "most biologically diverse areas in the world," with both cactus and camelias growing in the Big Thicket National Preserve.[8] In addition to lumber, an oil field discovery in 1931 in Gregg, Rusk and Smith counties have done the most to contribute to the economic development of the area. The East Texas Oilfield is the second largest in the contiguous United States.

Post Oak Belt

Bordering the Pine Belt on the west is the Post Oak Belt. Here, the principal industries are farming and livestock raising. Also in this area are the loblolly pines, the second most common species of tree in the United States stretching from East Texas to Florida. Normally found in the Pine Belt, there is a thirteen mile stretch of the Loblolly pines in this region outside Bastrop known as the *Lost Pines*. Legend tells that an American Indian bride from East Texas became homesick after moving to the area, and her groom returned to her native area and brought back seeds so that she would be surrounded by the trees that she grew up with back home.[9] The word *loblolly* comes from *lob* which refers to a thick, bubbling porridge, and lolly is a British word for soup boiled in a pot. In the U.S., the word is used to mean "a mudhole," and these pines are generally found in the lowlands and swampy areas.

Blackland Belt

Just to the west is the Blackland Belt, which stretches from the Rio Grande to the Red River just below the line of the Balcones Fault. Originally the land was a major cotton producing area and farming area until about the 1930s. Now it is one of the most populated areas in the state, having largest concentration of large and mid-sized cities. Because of the concentration of the population here, it has the most diversified manufacturing industry, including products from petroleum (ExxonMobil in Irving), pharmaceuticals (Reata Pharmaceuticals in Plano, and numerous others throughout the area), Gamestop (Grapevine); batteries (East Penn Manufacturing Company in Temple); flooring (Uzin in Waco), and computers (Dell and Apple in the Round Rock and Austin areas, Texas Instruments in Dallas), among many others.

Coastal Prairies

The Coastal Prairies extends all the way from the Sabine River on the Louisiana border along the coastline to the Rio Grande Valley. They stretch inland twenty to sixty miles and the line between the coastal prairies and the pine belt is very distinct. The grass along this area supports heavy cattle production and rice is grown from the abundance of rivers and wells.

Rice, introduced to Texas by Japanese immigrants in the early 1900s, was reinvented to improve the nutrition and shelf life of rice by Gordon L. Harwell, who perfected a parboiling technique with the research of German scientist Eric Huzenlaub and candy manufacturer Forrest E. Mars.[10] Both Mars and Huzenlaub moved to Houston to partner with Harwell to create a company that would eventually become Uncle Ben's Converted Rice.[11] "Uncle Ben" was named after an African-American rice farmer who farmed award-winning rice outside Houston.[12]

Industrial development between Houston and Beaumont is primarily petrochemicals and the aerospace industry. As you round the coastal bend from Corpus Christi to Brownsville, both cities have seaports. Cotton, grains, fruit, and vegetables are the most significant crops, and this is the home of the famed King Ranch with major cattle production. The King Ranch was purchased in 1853 by Captain Richard King and today covers over 825,000 acres, an area larger than the state of Rhode Island.

Lower Rio Grande Valley

The rich soils of Lower Rio Grande Valley, and the expansion of irrigation systems in the 1940s, has made agriculture the driving force, in what is known as *The Va*lley. “A mild climate allowed for a year-round growing season that allowed for all kinds of crops to be grown here, but the mainstays have been vegetables, citrus, sugarcane, cotton, and grains,” noted Dr. Merritt Taylor, a former economist at the the Texas A&M AgriLife Center in Weslaco.[13] Bordering Mexico, its subtropical climate is not without its problems, however, and vegetable growers work to adapt the varieties of melons, tomatoes, onions, peppers, and other vegetables that are cultivated in the region. The introduction of a mild jalapeno, for example, contributed to the creation of a salsa that now sells more than ketchup.[14] In addition, the Valley is the third largest producer of citrus, after California and Florida, in the United States.

Rio Grande Plains

Finally, the Rio Grande Plain lies south of San Antonio and covers the area between the Rio Grande River and the Gulf Coast. Much of the land is prairie, but there is also prickly pear, mesquite, dwarf oak, and other cactus and shrubs. This area is primarily devoted to raising cattle, sheep, and goats. The towns of Laredo and San Antonio are the largest cities. San Antonio is the trade center. Rainfall is less than twenty-five inches annually and the summers are hot, so irrigation is needed for crops.

Interior Lowlands

The North Central Plains are part of the **Interior Lowlands** that extend north all the way to Canada. They border the Blackland Belt on the east and travel west to the Caprock Escarpment. The escarpment is a geologic feature that forms a natural transition between the High Plains in the northern most part of the Texas Panhandle and the western edge of the North Central Plains. This feature stretches for some 200 miles and rises as high as 1,000 feet in some areas. Also found in the North Central Plains is Caprock Canyon State Park, home to one of the state’s largest colonies of free-tailed bats. You can also find herds of buffalo (**Figure 1.3.4**) and the rare golden eagle in the park. The North Central Plains are sandwiched between the Red River in the north and the Colorado River on the south. There are three major sub-areas in the North Central Plains: Western Rolling Plains; Grand Prairie; and the Eastern and Western Cross Timbers.



Figure 1.3.4: The Texas State Bison herd at Caprock Canyon State Park. The herd at Caprock Canyons State Park is the last remaining of the Southern Plains variety of the iconic American Buffalo, correctly referred to as bison. SOURCE: MWMassa , CC BY-NC 2.0. “Texas State Bison Herd: An Epic Journey from Near Extinction ot Celebration,” Texas Parks and Wildlife.

Western Rolling Plains

The Western Rolling Plains comprise about two-thirds of this area and rise from about 750 feet on the east to 2,000 feet at the base of the Caprock Escarpment. Annual rainfall falls as one travels west and temperatures have great variation between the heat

of summer and the cold of winter. Some of the state's largest cattle ranches are found in this area.

Grand Prairie

To the east of the Western Rolling Plains lies the Grand Prairie that extends south from the Red River. The area has few trees, but many streams making it adaptable for raising cattle and some staple crops. Some refer to it as the *Fort Worth Prairie*, this is an agricultural area with a rural population with Fort Worth being the only large city. True to its cattle heritage, Fort Worth—nicknamed Cowtown—has hosted the Southwestern Exposition and Fat Stock Show since 1896 and added indoor events under the Spanish name *rodeo* (cattle roundup) in 1918.[15]

Eastern and Western Cross Timbers

The Eastern and Western Cross Timbers surround the Grand Prairie on the north, east and west. These two southward extending bands are connected at the north by a narrow string along the Red River. The Eastern Cross Timbers travel south through Denton, Dallas and Tarrant counties to the Brazos Rivers and into the Hill Country. The larger Western Cross Timbers travel from the Red River south to the Colorado River and to the Llano Basin. The soils here produce commercial quantities of fruits and vegetable.

Great Plains

The **Great Plains** lie to the east of the base of the Rocky Mountains and extend into northwestern Texas with the High Plains, and on into the Hill Country of the Edwards Plateau, and the Toyah and Llano Basins.

High Plains

The High Plains is a vast, flat, high plain also known as the *Staked Plains* or, by its Spanish name, the *Llano Estacado*. Historians believe that the name could have come from explorer Franciso Vazquez de Coronado's expedition into the area where he used stakes to mark the route across the endless sea of grass to guide him back. Before making her home in Santa Fe, the painter Georgia O'Keefe taught school in the High Plains and fell in love with its open spaces. Writing to a friend she enthused over the big Texas sky: "The Eastern sky . . . all grey blue . . . nothing but sky and flat prairie land . . . .land that seems more like the ocean than anything else I know. . . . I am loving the plains more than ever it seems—and the SKY. . . you have never seen SKY—it is wonderful."[16]

The High Plains is not only home to skygazers, however; its high elevation also features canyons, including Palo Duro Canyon, the second largest canyon in the U.S. The Palo Duro Canyon is 120 miles long, between six and twenty feet wide, and located on the Prairie Dog Town Fork of the Red River. Other memorable canyons include on the White River and the Canadian Breaks on the Canadian River north of Amarillo.

The Texas High Plains are divided into the Northern and Southern Plains. The Northern Plains are major producers of wheat and grain sorghum, used primarily in livestock feed. Ranching has long been a mainstay of the region's economy, as have the oil, gas, refining and petrochemical. However, renewable energy has more recently been added, and today the region includes some of the world's largest wind farms. While wind was recently blamed for power outages in the brutal February blizzard, and temperatures in the High Plains are the traditional conduit for the arctic blue northers that travel across the Great Plains from Canada into Texas, most of the responsibility falls across Texas's energy grid, including oil, and Texas's independent power grid, which has no provision to borrow energy outside the state when a crisis occurs. The major city and hub of the Northern High Plains is Amarillo.

The Southern Plains also produces grain sorghum, but in addition, the Southern Plains leads the state in cotton production as well. Lubbock is the major city and Lubbock County is one of the state's largest cotton producers. Most of the irrigation for the farming comes from underground water reservoirs.

Edwards Plateau

The Edwards Plateau lies between the Rio Grande and the Colorado River and rises from 750 feet to about 2,700 feet. The semi arid plateau is ideal for grazing cattle, goat, and sheep with grass for the cattle, weeds for the sheep, and shrub trees for the goats. It is the nation's leading Angora goat and mohair producing region and a leader in sheep and wool. Mohair is the fabric or

yarn made from the hair of the Angora goat and is known for its high luster and sheen. Along the eastern portion of the Edwards Plateau is an area referred to as the *Hill Country*. It has several large springs that provide recreational activities including Barton Springs at Austin, San Marcos Springs at San Marcos and Comal Springs at New Braunfels. There are also rugged hills with steep slopes.

Toyah Basin

Located in the Pecos River Valley is the Toyah Basin, a broad flat remnant of an old sea floor. It is thriving now because of local oil fields.

Llano Basin

The Llano Basin lies at the junction of the Colorado and Llano Rivers and is home to two large and five small lakes as a result. On the Colorado River, the uppermost lake and one of the largest is Buchanan followed by Inks, L. B. Johnson, and Marble Falls. Lake Travis, the other largest lake is followed by Lake Austin and Lady Bird Lake. All of the lakes are known as the *Highland Lakes Country* and serve as a major recreational area. Granite domes form the core of ancient rocks, like Enchanted Rock (**Figure 1.3.5**), located north of Fredericksburg.



Figure 1.3.5: Sunset on Enchanted Rock. Enchanted Rock, located north of Fredericksburg, rises 1825 above sea level. The pink granite dome covers 640 acres. Legends abound that spirits inhabit the rock. It is a National Natural Landmark and is on the National Register of Historic Places. SOURCE: Gina Pina, licensed under CC BY 2.0.

Basin and Range Province

The **Basin and Range Province** has its center in Nevada but enters West Texas from southern New Mexico. This province extends from southern Oregon to western Texas and is an immense region of north-south faulted mountains and flat valley floors. There is nothing like it in the rest of the U.S. It was created about twenty million years ago as the Earth's crust stretched, thinned, and then broke into some 400 mountain blocks. In Texas, it has New Mexico as the northern border and the Rio Grande River on the south. This is the mountainous region of Texas, although not to be confused with the Rocky Mountains!

Guadalupe Mountains

The Guadalupe Mountains enter Texas from New Mexico and stretch for about twenty miles. This is the home of the highest peak in Texas, Guadalupe Peak at 8,749 feet and next to it sits El Capitan at 8,085 feet. Heading west are the Hueco Mountains lying east of El Paso. The small amount of rainfall falls into a series of salt lakes that are just west of the Guadalupe mountains. They are dry most of the time exposing the salt bottoms. Further west of the Hueco Mountains are the Franklin Mountains in El Paso.

Davis Mountains

The Davis Mountains are mostly in Jeff Davis County and are home to Mount Livermore, also known as Baldy Peak at 8,378 feet, the fourth highest and most isolated peak in Texas, along with several others over 7,000 feet high. The peak is named for Major William Livermore, who in 1884, was in charge of a military expedition to make a map of western Texas for the Engineer Corps. After reaching the top of the bare rock, he called it *Old Baldy*. This region receives moisture-bearing winds and more rainfall, so there is more vegetation. A distinctive feature in this area is San Solomon Springs, a series of artesian and gravity springs formed by subsurface geologic faults.

Big Bend

As you travel south out of the Davis Mountains, you come to Big Bend country receiving its name because it is bordered by the Rio Grande River on three sides. Mount Emory at 7,825 is the highest peak in Big Bend's Chisos Mountains. Santa Elena, Mariscal, and Boquillas Canyons are along the Rio Grande River with elevations between 3,500 and 3,775 feet. This area is also home to Big Bend National Park, a popular tourist destination. This national park is known as Texas's gift to the nation and is considered a magical place. The night skies are as black as coal and the rivers have carved canyons in the limestone. It includes the entire Chisos Mountain Range and a large part of the Chihuahuan Desert.

Upper Rio Grande Valley

The Upper Rio Grande Valley is also known as the *El Paso Valley* consisting of a strip of irrigated land running along the Rio Grande River for about seventy-five miles south and east of El Paso. Some of the oldest settlements in Texas are located here, including Ysleta, Socorro, and San Elizario founded in the 1680s. The principle crop is a long-staple variety of cotton, known for making sheets, towels, and other quality products.

As you have learned, Texas is geographically very diverse. The same can be said about the politics and the ideology in each of these regions. Right before the 2020 election, the *Washington Post* published a series of articles on a number of states that could be considered to be swing states during the election. Texas was one of those states, and they called it the "Seven Political States of Texas."[17] The a "Seven Political States of Texas" map in the article looks very similar to the physical regions of Texas.

Political ideology is a coherent set of views on politics and the role of government. The dominant political ideologies in the United States are the liberals on one side and the conservatives on the other side with the moderates in the middle. In general, the liberals, who tend to be Democrats, believe in the positive use of government to bring about change when needed particularly to protect civil liberties and ensure equality. Conservatives, usually associated with the Republican Party, wish to preserve the status quo. They favor reduced governmental interference, tax-cuts and they prefer state government over the federal government. The moderates are those people who fall in the center category between liberals and conservatives. After the adoption of the constitution of 1876, Texas was a dominated by the Democratic Party, but it was still a conservative state. Between the 1970s and the 1990s, Texas saw some two-party competition before the Republican Party became the dominant party. Nevertheless, while Texas is a conservative state, there are variations as you travel across the state.

Looking back at the *Washington Post* "Seven Political States of Texas" map and their analysis before the election, several questions emerged. Houston and its suburbs had become more Democratic. West Texas (the Basin and Range Province) and the Rio Grande Valley had also become more Democratic. However, polling among Hispanic voters was all over the place and there was wide speculation about their turnout. Many felt that the Hill Country, with liberal Austin in the center, might be more competitive. The Republicans would dominate in North and East Texas, so political pundits across the state had their eyes on Texas.

If we look back to the 2016 election, Hillary Clinton carried five of the most populous counties in Texas which contained the cities of Houston, Dallas, Fort Worth, Austin, and San Antonio. But fifty-seven percent of the total vote in Texas came outside those counties. Texas has millions of rural, White, conservative voters that turned out for Donald Trump where he won by nine points, still a small margin. In the mid-term election of 2018, the Democrats picked up two U.S. House seats and came within five points of winning several statewide races.[18] The Democrats had high hopes for the 2020 election, but it did not materialize.

Democrats hoped that a high voter turnout would mean victory, but even with a high turnout of sixty-six percent, the state went for President Trump with about the same percentage of the vote that he secured four years earlier. Because of the COVID-19 pandemic, early voting was extended and most Texans voted early with only thirteen percent voting on the actual election day. Long-time political lobbyist and consultant, Bill Miller said, "Texas has changed somewhat, but it hasn't changed from its basic

nature. The more people that vote, the more it will reflect that."[19] A competitive election between Republicans and Democrats that was expected just did not happen.

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1.4: Industries That Shaped Texas Politics

Between 1519 and 1800, when Spanish explorers first came to Texas, the Spanish established only a few settlements. Immigration from the U.S. was mainly from Tennessee. The settlement founded by Moses Austin and later his son, Stephen, continued to grow and with this growth came the early industries in Texas of cotton and cattle.

In the early 1800s, Texas was a desolate outpost, sparsely populated. Only at the end of that century did Texas begin its economic transformation with the growth of the cotton industry, the cattle industry, the timber industry, the development of railroads and the discovery of oil. Moving into the 1900s, Texas still depended on its mineral wealth, but technology and the service industry along with its integration into the national economy saw rapid growth. By the beginning of the twenty-first century, Texas became an economic powerhouse.

One of the most influential economists of the early twentieth century, Joseph Schumpeter espoused the theory of "creative destruction," a theory that describes economic growth as part of a process wherein old industries are replaced by new ones.[20] Technological innovations will replace the outdated ones. Certainly, this is the cycle in Texas.

Cattle

Cattle were first brought to Texas by the Spaniards as early as the 1690s. By the 1730s, herds were along the San Antonio River to feed the missionaries, soldiers, and civilians in and around San Antonio and Goliad. Later, the colonists coming to Texas in the 1830s were primarily farmers, but they recognized that cattle could graze on the lush pastures with minimal care (**Figure 1.4.6**). During the 1840s and 1850s, herds were driven to New Orleans, with some heading north on the Shawnee Trail. By 1860, cattle ranching moved to the north central frontier, just west of Fort Worth. In the late 1870s, the cattle industry moved into the Davis Mountains and Big Bend and the plains of West Texas. By the end of the nineteenth century, the open range changed to fenced pastures. Droughts, deflation and the depression took its toll on the cattle industry, but by the 1950s, beef cattle had returned to profitability and Texas was the leader with the Hereford breed. By 1995, Texas led the nation in cattle production and in the number of farms and ranches. Today, the industry is certainly different with the rise of commercial feedlots, sophisticated slaughter and meat-packing industries, and the use of computers. And on many ranches, hunting leases have replaced cattle raising.



Figure 1.4.6: "Cowhands drive the 200-head longhorn herd at the 1,800-acre Lonesome Pine Ranch, near Chappell Hill in Austin County, Texas. The ranch was originally settled in 1823 by one of the "Old 300" Texas pioneers who received land grants from Stephen F. Austin. SOURCE: Photo by Carol M. Highsmith / Library of Congress

Cotton

Cotton was first grown by Spanish missionaries in the late 1600s. Missions were to be self-sustaining, with local peoples recruited (or coerced) to dig irrigation, plant crops, and tend livestock, under the direction of the missionaries. Young women were usually responsible for weaving blankets and clothes from mission cotton.[21] In 1745, the missions at San Antonio reported that several thousand pounds of cotton were produced annually.

In 1820, Spain opened Texas to immigrants to help settle and defend their borders to the north from the hostile Plains Indians. Most of the early immigrants to Texas came from Tennessee, Virginia, and Georgia, and they brought with them their expertise in growing cotton. With the invention of better plows, the laborious practice of hoeing fields by hand was made more efficient. At the same time, the invention of barbed wire made fencing inexpensive compared with the traditional wood fences, and this made it easier for farmers not only to protect but also to invest in larger landholdings. Barbed wire increased land productivity by thirty percent.[22] Add the extension of railroads to get cotton to maket and cotton became the principal crop in Texas and remained so until the 1920s. One major change during this time was a shift from cotton farming in the east and central parts of the state to the High Plains and the Rio Grande Valley. The decline after the 1920s came as a result of a drop in demand during the Great Depression, the loss of labor during World War II, the competition of cotton production abroad, and federal efforts to hold down production to regulate prices. Today, a great deal of Texas cotton is exported overseas or used for other purposes. Contemporary uses include fertilizer, paper, tires, cake and meal for cattle feed, and cottonseed oil for cooking, paint, and lubricants.

Timber

Lumber has been manufactured in Texas since the early 1800s. After Texas won its independence from Mexico, the demand for lumber increased and sawmills increased in number. The 1860 census reported about 200 sawmills that employed about 1,200 workers. Between 1880 and the depression, the lumber industry in Texas saw a bonanza especially with the railroad network providing transportation to every section of East Texas. For those working in the sawmills, it meant long hours, low pay, and a number of accidents. Under the New Deal program of President Franklin D. Roosevelt, the Civilian Conservation Corps undertook a number of jobs including clearing underbrush and planting pine seedlings. The federal government also purchased more than 600,000 acres of over-cut land and established four Texas national forests. Here began the task of developing second-growth forests that would provide timber, recreational facilities, and a wildlife habitat for the next generation of Texans. A new industry producing newsprint from pine began operations in Lufkin, Texas, in 1940 and created a new market. Forestry programs at Stephen F. Austin State College in 1946 and Texas A&M in 1969 have allowed for better research for the problems facing the Texas forests. Even with the decline, the lumber industry in Texas continues to contribute to the economy of the state.

Railroads and Transportation

The influence of the railroads grew in the late 1800s as service extended to the Panhandle and the High Plains of West Texas. Because railroads had a monopoly (the huge investment to build them makes it inefficient to have more than one provider) they had enormous power over the farmers and ranchers. Many poor farmers formed agrarian coalitions in the 1870s to fight price gauging by the railroads, and this Grange Movement became influential in politics. Influenced by the Grange Movement, James Stephen Hogg ran for governor in 1890 on the promise of regulating the railroads. On the same ballot was a constitutional amendment to create a railroad regulating body that primarily would regulate the freight rates. The first commissioners were appointed until the next election when the legislature made them elected seats. Governor Hogg pushed through a series of laws, known as *Hogg's Laws* to limit the power of the railroads, out-of-state corporations, and insurance companies.

Texas established the Texas Good Roads and Transportation Association in 1932 to allow for public expenditure and maintenance of the roads in the state. In 1946, an amendment to the Texas Constitution required that three-quarters of all revenue from gasoline taxes go towards the public roadways not only for construction and maintenance but also for implementing traffic safety laws.

Oil

The first economical discovery of **oil** came in 1894 in Navarro County near Corsicana, peaking in 1900 with the production of 839,000 barrels of oil. But it was the discovery at the Spindletop oilfield just outside Beaumont in 1901 that ushered in the oil boom in Texas, producing an estimated 75,000 barrels of oil a day. In 1902, J. M Guffey Petroleum Company (later renamed Gulf Oil Corporation in 1907) built the first large refinery at Spindletop. When the Houston Ship Channel opened in 1914, even more

refineries were built and more discoveries of oil were found in the upper Gulf Coast area. In 1905, taxation on oil production became an important source of revenue for Texas. By the 1930s, oil exploration moved into North Texas, central Texas, the Panhandle, and the Permian Basin of West Texas. Natural gas discoveries also took place early in the nineteenth century as well, and pipelines were constructed. East Texas got into the oil scene in the 1930s with the discovery of Daisy Bradford No. 3, a giant oilfield underlying five counties. Developments in the industry during the 1950s included better means of production, expansion of the petrochemical industry, and even more natural gas discoveries.

Foreign oil production and federal regulations have played a signification role in the industry since the 1970s producing several boom or bust periods. When the financial market crashed in the Great Recession of 2007-2008, the high energy prices provided a cushion for Texas. And the fracking revolution (a technique used to extract natural gas or oil from shale and other "tight" rocks [23]) has kept Texas as the top oil-producing state until the pandemic of 2020. In November of 2020, the price of oil was a third of what it was in January. Fortunately, the prices have been slowly inching back up.

Technology and More

Texas continued to rely on the abundant resources provided by the oil industry, timber, ranching and agriculture until after World War II. The economic boom that followed helped Texas develop a base for industrial production, create transportation hubs in the airline industry, expand technology, and create opportunities for travel and entertainment. Texas learned to diversify its economy and continues to do so.

Economically, Texas has been one of the strongest performing states for a number of years. It is known for being a good place to do business and has secured more corporate locations and expansions than any other state. Texas has won the Governor's Cup, given by *Site Selection Magazine*, for the most major projects, including job creation and capital investment, for the past eight years. [24]

The central location of Texas in the U.S. is ideal for expansion with its urban population, interstate highways, international airports, seaports, railways and international border crossings. Add to that low taxes and quality of life, many companies choose to do business in Texas. Texas is no stranger to large corporations. Dell Computer has its headquarters just north of Austin in Round Rock. Telecommunications giant AT&T is based out of Dallas, as is Texas Instruments, which produces calculators and other electronics and is the tenth largest producer of semiconductors in the world. Other companies with a headquarters or a significant presence in Texas include Samsung, GM, Toyota, and Peterbilt, just to name a few.

Texas is home to two international airlines, two of the world's busiest airports, fifteen active military bases, and the Johnson Space Center operated by the NASA. The Dallas-Fort Worth area has the largest number of aerospace manufacturing workers and is headquarters to American Airlines and Southwest Airlines. San Antonio, referred to as *Military City, USA*, is home for tens of thousands of U.S. Air Force personnel. Houston is home to NASA mission control and many spaceflight contractor firms.

Texas is the only mainland state that has its own power grid, heralded until recently for producing more electricity than any other. For the most part, Texas is dependent on its own resources to supply the state with electricity. The power grid is operated by the Electricity Reliability Council of Texas (ERCOT), and currently ERCOT is under fire for its failure in the catastrophic February 2021 blizzard that left much the state without electricity. The renewable energy industry is one of the largest in the nation, with abundant wind and solar resources.

Houston is not only considered the energy capital of the nation but is the location for almost every part of the petroleum industry. It is not surprising that Texas leads the nation in petroleum refining and chemical products production. More than fifty percent of the total U.S. chemical production is produced and processed in Texas. ExxonMobil has its headquarters in Irving, adjacent to Dallas, and ExxonMobile Chemical is headquartered in Spring, just north of Houston.

Texas is home to the world's largest medical center, the Texas Medical Center. It is also home to Texas Children's Hospital, the world's largest children's hospital, and MD Anderson Cancer Center, the world's largest cancer hospital. There are currently thirteen medical universities in the state and that will expand with a new medical school at Sam Houston State University out of Huntsville.

Enter 2020 and the COVID-19 pandemic which was not only a health crisis, but also an economic crisis. Despite the robust economy prior to the pandemic, Texas was not immune to so many unexpected situations. During 2020, all of the major taxes were down: the sales tax was down five percent; the oil production tax was down 45.5 percent; the natural gas production tax was down twenty-five percent; the alcoholic beverage taxes were down 28.5 percent; and the hotel occupancy tax was down 48.5 percent. Unemployment peaked in April at 13.5 percent but has slowly gone back down to 7.2 percent by the end of December

2020.[25] Low wage earners, predominantly women and minorities, in the service industries suffered the most. The hotel industry along with restaurants and bars were particularly hit hard. Restaurants became creative with curbside pick-up and to-go alcohol orders, but in September the Texas Restaurant Association reported that fifteen percent of the state's 50,000 restaurants closed for good. Retail businesses continue to report losses and of course, airline traffic declined steeply. Certainly, the COVID-19 crisis changed life as Texans and the rest of the country knew it, but it appears that individuals, businesses, schools, and others have found ways to restructure workplace practices through the use of technology. At this point, the economists still cannot predict the long-term effects of the pandemic. History has shown the resilience of Texans, and this crisis will show the same spirit.

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1.5: The People of Texas

Every ten years, the U.S. conducts a census to try to count every person living in the country. We need those numbers to reapportion the seats in the U.S. House of Representatives and to determine how many seats each state will receive. We need the numbers to determine the number of electoral college votes a state will get when electing the president. And, these numbers are used to redraw congressional and state legislative boundaries to account for population shifts. In 2016, Texas received $59.4 billion based on its population for federal programs like Medicaid, Federal Student Loans, Federal Pell Grants, School Meals Programs, High Planning, and more.[26] An undercount of just one percent could result in a loss of millions of dollars. The census also gives us information about people of color, immigrants, children, low-income populations, and renters. Obviously, the government is worried about the 2020 census because of the pandemic and the very real possibility of an inaccurate count. In this section, the discussion will revolve around the demographics of the state and those people of Texas.

Population

Texas is the second most populous state in the United States, after California. In December of 2019, the Texas Demographic Center estimated the population for Texas at 28,702,243 which represents an almost fifteen percent increase from the census count of 25,145,565 in April of 2010. For every year since 2006, Texas had added more population than any other state, with most of that growth in the big cities. The population density in 2019 stood at almost 110 residents per square mile of land area, higher than the national population density. However, most of the population live in the major cities such as Houston, San Antonio, Dallas-Fort Worth, and Austin. The majority of the counties experienced population growth, especially those metropolitan counties (Table 1.5.1).

Table Top 10 Texas Places with Greatest and Least Numeric Change between 2010 and 2018

Place	Ranking	2010	2018	Numeric Change
Houston	1	2,100,263	2,324,916	224,653
San Antonio	2	1,327,407	1,533,572	206,165
Austin	3	790,491	966,089	175,598
Dallas	4	1,197,816	1,357,303	159,487
Fort Worth	5	741,206	884,593	143,387
Frisco	6	116,989	188,522	71,533
McKinney	7	131,117	182,199	51,082
Sugar Land	8	78,817	128,311	49,494
El Paso	9	649,121	682,669	33,548
Pearland	10	91,252	122,242	30,990
Lamesa	1,212	9,422	8,970	-452
Presidio	1,213	4,426	3,957	-469
Sweetwater	1,214	10,906	10,396	-510
Pampa	1,215	17,994	17,344	-650
Kingsbury	1,216	782	130	-652
Kingsville	1,217	26,213	25,487	-726
Borger	1,218	13,251	12,508	-743
Vernon	1,219	11,002	10,236	-766
Eden	1,220	2,766	1,538	-1,228
Plainview	1,221	22,194	20,714	-1,480

Table Top 10 Texas Places with Greatest and Least Percent Change between 2010 and 2018

Place	Ranking	2010	2018	Percent Change
Fulshear	1	1,134	11,990	957.3
Coffee City	2	278	1,473	429.9
Prosper	3	9,423	24,432	159.3
Melissa	4	4,695	11,565	146.3
Manvel	5	5,179	12,662	144.5
Manor	6	5,037	11,936	137.0
Annetta	7	1,288	3,053	137.0
Selma	8	5,540	13,027	135.1
Escobares	9	1,188	2,775	133.6
Buda	10	7,295	16,915	131.9
Hedley	1,212	329	296	-10.0
Lockney	1,213	1842	1653	-10.3
Presidio	1,214	4426	3957	-10.6
Impact	1,215	35	31	-11.4
Floydada	1,216	3,038	2,671	-12.1
Eldorado	1,217	1951	1681	-13.8
Marfa	1,218	1981	1702	-14.1
Eden	1,219	2766	1538	-44.4
Paint Rock	1,220	273	151	-44.7
Kingsbury	1,221	782	130	-83.4

Source: Texas Demographic Center, 2018 Population Estimates; Note: Analysis does not include Census Designated Places (CDPs).

Table 1.5.1: Top 10 Texas Places with Greatest Numeric Change Between 2010 and 2018

As Table 1.5.1 shows, most of the population growth came from the large urban cities. Those top ten cities added over one million people in population between 2010 and 2018 which accounted for thirty-two percent of the population growth in Texas. As the bottom of the table shows, those areas with the greatest population losses are mostly rural and sparsely populated. This is particularly true in the Panhandle and West and East Texas.

Table 1.1 also shows the top ten areas with the fastest growth rates and most of them are in the suburban areas. For instance, Fulshear is located in Fort Bend County adjacent to Houston and had the fastest rate of growth, over ten times from that of 2010. Coffee City is located in the Dallas-Fort Worth area and grew over five times from that of 2010. And the rest of those areas saw at least a thirty percent increase in their populations. At the bottom of the table, the decline is most evident in the rural areas not adjacent to a metropolitan area. Even though Texas added over 3.55 million people between 2010 and 2018, it is not evenly distributed across race and ethnicity.

Race and Ethnicity

According to population estimates from the United States Census released in July of 2019, nonHispanic Whites account for about 41.2 percent, Hispanics 39.7 percent, African Americans 12.9 percent, Asian Americans 5.2 percent, and American Indians one percent of the total population in Texas. The remainder would include two or more races or other. Texas is one of only six states to be a **majority minority state**, which means Hispanics, African Americans, Asian Americans, and American Indians combined equal more population (58.8 percent) than the nonHispanic White population (41.2 percent). It is expected that Hispanics will become the largest population group in Texas as early as 2022.

Non-Hispanic Whites had a decline in population while Hispanics experienced an increase. Between 2010 and 2018, Hispanics saw an increase of almost two million people. By contrast, African Americans saw an increase of 541,760 people, Whites saw an increase of 484,211, and Asians saw an increase of 473,193. While the Hispanic community is growing across the state, forty-seven percent live in the state's five biggest counties—Harris, Bexar, Dallas, Tarrant, and Travis. Although the numbers are smaller, the rate of growth of the Asian population has seen the largest increase from 2010 at forty-nine percent. The Hispanic population has grown twenty percent, the Black population nineteen percent and the White population four percent. The number of Blacks continue to grow, but their share of the population has remained fairly stable at just over twelve percent.

Almost all Texans are immigrants. They just arrived at different times making Texas the diverse state it is today. During the 300 years of Spanish rule, people came from Spain, the West Indies, the Canary Islands, but mostly from Mexico. Then the Mexican government opened up Mexican Texas for immigration to keep control of the area. After independence, waves of Anglo and European people came to Texas. Finally, by the end of the twentieth century, non-European immigration became the settlement story.

Non-Hispanic Whites

Between 1821 and 1835, Stephen F. Austin and a few others settled about 30,000 Anglo-Americans in Texas during a period referred to as *Anglo-American Colonization*. Cotton farming was prevalent in eastern Texas and trade was established with the U.S. through New Orleans. Throughout the nineteenth century, the availability of cheap land continued to attract settlers from the U.S. Johann Friedrich Ernst bought land from Austin in 1831 and attracted more German settlers due to the glowing letters he wrote home. Henri Castro also brought Germans to Texas, establishing a large colony in Castroville, southwest of San Antonio. The Society for the Protection of German Immigrants in Texas was formed to raise money to buy land grants and over 7,000 immigrants from Germany followed. Wars in Europe continued the immigration bringing the English, Irish, Dutch, Poles, Swedes, Norwegians, Czechs, Italians and the French to the U.S. and Texas. The diverse European immigrants can still be found in town names, architectural styles, music and the food in Texas.

Most Anglos who moved to Texas believed it would eventually become part of the United States, but after independence in 1836, it took almost ten years to achieve statehood. As a Republic, Texas had no political parties. Sensationalistic newspapers advocated for or against particular personalities, like Sam Houston, the military hero who had won independence at the Battle of San Jacinto. Texas finally did become a state in 1846, but despite the objections of proUnionists like Houston and others, especially the Bexar County Germans, Texas was drawn into the Civil War, seceding from the Union February 1, 1861.

The Reconstruction period between1865-1899 was tumultuous and bitter for former Confederates. Union troops occupied the state, and an autocratic E. J. Davis was appointed governor to enforce loyalty to the Union of former Confederates and protect the rights of newly freed African Americans. Once the old elites had regained power, Texas aligned with the southern Democratic Party and remained a Democratic one-party state for a hundred years.

Hispanic Americans During the early 1700s, the Spanish sent more than thirty expeditions into Texas. San Antonio had a military post and a mission (the Alamo). Missions were also established in Nacogdoches to the east, Goliad in the south, and El Paso in the west. With Mexican independence in 1821 the Mexican government moved from monarchy to republic to dictatorship, with numerous coups in between, seemed distant at best. But *Texians* (Anglo colonists) and *Tejanos* (Texans of Mexican descent) chafed as President Santa Anna sought to increase taxes and centralize power in Mexico City. These conflicts evolved into a full-scale revolt, and fought together for independence from Mexico.

The Hispanic population in Texas became Mexican Texans after Texas won its independence n 1836. Then when Texas became a part of the U.S., Mexican Texans became Mexican Americans. Today Texans may identify as *Hispanic*, *Latino*, *Mexican American*, *Mexicano*, *Chicano*, or *Tejano*. Thousands of Mexicans from El Paso to the Valley where the Rio Grande River meets the Gulf of Mexico, became Texans. After the Civil War, many Mexican workers came to Texas to work on the railroads and on farms and ranches. This immigration expanded even more with the Mexican Revolution of 1910 when refugees escaped Mexico to come to

Texas. Many Mexican Americans in Texas have roots back to early frontier settlement and have played a major role in the culture, economy, and political life of Texas from the beginning.

Large numbers of the Hispanic population can be found in the cities of Houston, Dallas/Fort Worth, San Antonio, Austin and El Paso. Also, large numbers in the southern Rio Grande Valley and in the counties bordering Mexico. Forty-seven percent of the Hispanic population live in the state's five largest counties—Harris, Bexar, Dallas, Tarrant ,and Travis. The population has grown by more than two million since 2010 to a total of about 11.5 million, and the Texas demographer predicts that Hispanics will be the state's largest population group by the summer of 2021. In 2018, Texas gained nine Hispanic residents for every additional White resident.[27]

African Americans

People of African descent have been in Texas since the Spanish Colonial Era. Their population expanded during the period of Mexican rule as the Anglo immigrants brought enslaved people to work in the fields. By 1860, thirty percent of Texas's population were enslaved peoples.[28] The Confederacy lost the Civil War in 1865, and on June 19 that year— Juneteenth—word of the Emancipation Proclamation reached Texas. After the Civil War, many stayed as laborers or sharecroppers, while other large groups settled in the segregated parts of the large cities, especially Dallas and Houston. During Reconstruction, thirty-five African Americans held elected office in the Texas legislature. After Reconstruction, those in power passed segregationist Jim Crow laws that curtailed the rights of African Americans and their engagement in political life. These laws were in effect until the Civil Rights Act of 1964 and the Voting Rights Act of 1965 were passed under President Lyndon B. Johnson, making segregation illegal and outlawing discrimination at the voting booth.

Texas ranks tenth in the nation with high political engagement among African Americans. There are approximately 1.5 million Black voters in Texas, more than any other state in the country and they form the base of the Texas Democratic Party. The party issued the following statement before the November 2020 election, "Make no mistake about it, Black voters are the backbone of the Texas Democratic Party." [29] In 2020, data indicated that eightynine percent of Black voters supported President Biden.[30] Turnout in the election showed that the Black vote was almost exactly the same as the Anglo vote with 58.8 percent and 58.6 percent respectively. [31] More important, organizational efforts by Black groups have created outreach plans to be sure they are registered to vote, that they do vote, and that they vote Democratic. Another statement by the Texas Democratic Party, "The Texas Democratic Party couldn't be more thrilled to partner with Powered By People and the Texas Coalition of Black Democrats to launch the most expansive Black voter contact program in Texas history. For too long, Black voters have been underrepresented in outreach and investment by organizations that haven't truly harnessed or understood the power of the Black vote."[32]

Asian Americans

Vietnamese Americans, Chinese Americans, Filipino Americans, Korean Americans and Japanese Americans dominate the Asian population in Texas. The Asian Texas population has grown primarily in western Houston, the suburban areas of Dallas and Arlington, and Austin. There is also a large number of Asian Texans long the Gulf Coast because the shrimp and fishing industry attracted thousands of Vietnamese, Filipinos, and Chinese during the 1970s and 1980s to escape their country's government. The Vietnamese were particularly drawn to the Gulf Coast due to the similarity of the climate to home. Families worked together to purchase shrimp boats and to bring other families to Texas from Vietnam. Over 210,000 Vietnamese live in Texas and Vietnamese is the third most spoken language in Texas.

Neither of the political parties have done much to reach the Asian Texas population until recently. In the 2020 election, fifty-one percent turned out to vote, almost eight percent higher than the national average turnout for this ethnic group.[33] And sixty-three percent supported President Biden.[34] Asian Texans have traditionally voted Republican, but that seems to be changing as well. And although only about five percent, or 1.5 million people are Asian Texan, they are a fast-growing group in the state.[35] While there are differences among the different ethnic groups, they tend to end up behind one candidate. Vietnamese Americans and Filipino Americans tend to be slightly more conservative while the Indian Americans and Japanese Americans tend to be more progressive. In the future, both political parties will be courting this group.

American Indians

American Indian settlements have been discovered in Texas that are well over 12,000 years old. American Indians are not a single group but comprise many cultures and languages, with a wide variety of housing and food. After a rich history, only three federally recognized tribes still have reservations in Texas—the Alabama-Coushatta in Livingston, the Kickapoo in Eagle Pass, and the Ysleta del Sur Pueblo in El Paso.

The removal of indigenous peoples from Texas took place around the same time as the forced relocation of tribes from all across the country known as the *Trail of Tears*. When the second president of the Republic of Texas took office in 1838, Mirabeau B. Lamar declared an "exterminating war" on American Indians.[36] Although the reasons given were attacks on settlers—especially in Central and West Texas—and suspicions that the Cherokee in East Texas would unite with Mexico,[37] the real purpose of removing American Indians from the Republic was, as it had been thoughout the history of broken treaties in America, to acquire their land. Reservations were established for resettlement and when they closed, most of the occupants were relocated to reservations in Oklahoma.

The oldest remaining reservation in Texas is the Alabama-Coushatta with about 650 residents. The other two reservations are along the Rio Grande River received recognition in 1960. The Tiguas were brought from the area around Albuquerque, New Mexico, and live on trust land in El Paso County and have about 1,400 residents. The Kickapoos came from the Great Lakes region and received their land in 1985 and have about 650 residents.[38]

Between the 1950s and 1980s, the federal government resettled about 40,000 American Indians in the Dallas/Fort Worth area to begin a program of integration into American culture. Today, there are about 4,000 Indians in that area. Linda Pahcheka-Valdez was nine years old when she moved from Cache, Oklahoma to Dallas. "They put us in areas like the West Dallas projects, and in the projects, our people became aware of each other," she said.[39] "We have four Native American Indian churches here in Dallas. And we have a tendency to find each other."[40] Tribal Council Chairperson Cecilia Flores of the Alabama-Coushatta Tribe acknowledges that voter turnout has been low. When an electronic bingo facility, which is run by the tribe and employs over 700 local people, was threatened with closure over conflicts with federal laws, the tribe began to organize. The hope is to increase voter participation so that their issues will be taken more seriously. "We're doing a lot more voter education and letting people know that they do have a voice and that these issues that are out there on the table now," said Flores, who is also a U.S. Air Force veteran.[41] "We can have some influence if we have a voice in our voting and who our representatives are in Congress and at the state level."[42] Nationally, voter turnout among American Indian and Alaska Native voters is about one to ten percentage points below other racial and ethnic groups.

Age and Ability

Urban growth has been partly fueled by young people.[43] Young people are also moving to West Texas, South Texas, and the Panhandle for jobs in the oil industry, making Texas younger than the average state. Almost twenty-six percent of Texas's population is age eighteen or younger, which really lowers the median age of Texans. The median age in Texas is 34.4 years old; the median age nationally is 37.8.[44] Since 2010, Texas has had the nation's second highest population growth of people under eighteen years old.

In addition to becoming more diverse and urban and younger, however, as Texas grows, it also becomes older. Most of the aging is taking place in the rural counties as baby boomers are aging into the sixty-five plus range. Those sixty-five and older had the greatest increase with slightly more than one million. Almost thirteen percent of Texans are over the age of sixty-five and that number is expected to increase to twenty percent by 2050 as medical advances enable people to live longer. Texas Health and Human Services reports that this expected increase will mean an increase in all types of health and services such as health care, home care, personal care and long-term care.

With almost the same percentage, almost thirteen percent of all Texans have been identified as having a disability. Texas Health and Human Services defines a disability as people who are limited in one or more of major life activities—hearing, seeing, thinking or memory, walking or moving, taking care of personal needs (bathing, feeding, dressing) or living independently. Some are born with a disability; others are the result of accidents, injuries or just getting older.

The aging population along with the disabled population present challenges in meeting their needs. It is the goal of Texas Health and Human Services to help people in both of these groups to live independently in their own homes or communities when possible, help family caregivers the tools to care for these individuals, and to provide information about state and/or federal benefits and legal rights.

Income

In 2018, Texas enjoyed the fastest income growth in the U.S. Incomes expanded six percent as compared to 4.2 percent for other Americans.[45] 2019 was another good year—overall median income was up, the number of families living in poverty decreased, and unemployment rates were lower. Nevertheless, even before the pandemic, the overall poverty rate in Texas is about fifteen percent, significantly higher than the 9.2 national average.[46] Data showed that since the pandemic the number of food insecure

households has doubled and the unemployment rate rose to 12.8 percent, though this is still below the national average of 14.7 percent.[47] The number of children living in poverty comprise about twenty-two percent; the senior poverty rate is about eleven percent; women living in poverty is about sixteen percent, and about nine percent are living in extreme poverty. Approximately fifteen percent of Texans are food insecure, seventeen percent are uninsured, twenty-seven percent have low wage jobs, and thirty-six percent of working families are still under 200 percent of the poverty line. All of this means that the need for social welfare programs is high. Table 1.5.2 shows the number of Texans receiving assistance from a variety of these programs.

Table 1.5.2: Participation in Federal Programs SOURCE: from Spotlight on Poverty and Opportunity.

Participation in Federal Programs	
Adults and children receiving welfare (TANF)	61,621
Children receiving food stamps (SNAP)	2,564,138
EITC recipients	2,600,000
Families receiving child care subsidies	62,600
Households receiving federal rental assistance	277,000
Households receiving LIHEAP (Low Income Home Energy Assistance Program)	142,758
Number of children enrolled in Medicaid and CHIP	3,286,092
Number of women and children receiving WIC (Women, Infants and Children supplemental nutrition program)	746,246
Participants in all Head Start programs	72,087

Religion

Since the mid-1830s, Protestantism has dominated the religious life of Texans, although Catholicism was the first established religion in Texas. After achieving independence, Methodist, Baptist, Presbyterian, and Episcopal churches and parishes spread across the state. These denominations were certainly interested in personal evangelism, but they were also concerned with education, slavery and temperance. When Martin Ruter, Superintendent of the Methodist Texas Mission came to Texas in 1837, he believed that alcohol was to blame for the unruliness in Texas. He declared “profaneness, gaming, and intemperance” to be the “prevailing vices against which” Texans had “to contend.”[48] To many pastors and priests, only total prohibition would be the desired outcome.

The Texas churches valued learning and they began establishing schools at an early date. The Catholic church had been teaching at the missions from the beginning of Texas mission history. Later, Protestant Sunday schools were present in Moses and Stephen Austin’s colonies. Churches founded a number of academies, institutes, colleges, and universities.

Mexican Texans have overwhelmingly been Roman Catholic, while African Texans have overwhelmingly been Baptist. After the Civil War, White congregations were divided over the decision to retain the former slaves within the congregations or to have them form their own churches. As one Houston Baptist said, “to exclude freedmen from White churches would leave them vulnerable to the combined evil of ignorance, superstition, fanaticism, and a political propagandism more dangerous and destructive to the best interests of both Whites and Blacks than Jesuitism itself.”[49] African American Texans, on the other hand, wanted their new freedom and formed their own independent churches.

Modern Texans are more religious than their ancestors and more Texans belong to organized religious bodies than Americans at large. About sixty percent of Texans say religion is important in their lives and that can affect voting. As political scientist Matthew Wilson from Southern Methodist University put it, “I think as we move into the future we are going to see more of a kind of secularist, non-religious pushback against some things. So there will be changing dynamics, but religion is going to continue to be an important part of Texas politics for the foreseeable future.”[50]

Education

Seventy-one percent of jobs in the future will require some college, but only thirty-two percent of high school graduates in Texas go on to some kind of post-secondary education, slightly lower than the national average of thirty-five percent, though still fifth among states for those who attained some college.[51] Higher educational attainment is associated with higher earning power, with

college degree recipients earning ninety-eight percent more on average.[52] Austin-Round Rock is in the top ten for educational attainment nationally; McAllen-Edinburg Mission and Brownsville-Harlingen rank among the lowest, respectively.[53] Discouragingly, Texas has the largest gender gap in educational attainment, and the seventh largest racial gap.[54]

Texas is not unique when it comes to the issues it faces in educating its students, such as how to finance education, standardized testing of students, student population growth, school choice, setting school calendars, and dealing with aging infrastructure. However, as the Eighty-Seventh Texas Legislature meets in 2021, it must deal with a year of a pandemic leaving many students falling behind. At this point we do not have enough data to accurately predict just how far behind these students are, but it will be significant.

The first major hurdle is how to administer the State of Texas Assessment of Academic Readiness (STAAR) standardized test. Texas is requiring all districts to allow in-person learning for all students who want it and a survey taken at the end of October, 2020 showed 2.8 million students were in the classroom. But with a total of 5.5 million students, millions were still learning online. Current estimates say students are three months behind, but many fear that is a low estimate. The STAAR test was canceled in the spring of 2020 after the pandemic closed schools and learning was moved online. Many are calling for it to be canceled in 2021 as well. The Texas Education Agency has said that students must show up in person to take the STAAR test.[55] By mid February 2021, the Commissioner altered his earlier requirement. Those students whose parents have kept them home as virtual learners during the pandemic do not need to take the STAAR test after all. That will not apply to the graduating seniors in the class of 2021, those students who do not show up to take the exam in person, whether they are still learning virtually will not graduate.[56] The Texas Education Commissioner says that the data collected from the tests will show the educational gaps caused by the pandemic. Texas is moving ahead with plans to have all state required standardized tests online by 2022, with exclusions for students with disabilities or other special needs. However, the costs will affect districts across the state disproportionately, especially those that are small and rural.

Schools are struggling to find enough substitute teachers during the pandemic when the coronavirus has affected Texas teachers. Many administrators, school staff and others without credentials have been sent into the classroom. In some instances, other teachers are “adopting” another teacher’s class by posting lessons and recording videos for both classes. This is causing additional stress on students who do not know when or whether their teacher will be back in the classroom.

In the last legislative session, a bill was passed which made big changes to way schools are funded and added $6.5 billion into public education. That bill was passed while the Texas economy of booming, but will be much more difficult after a pandemic 2020 and high unemployment. Families and businesses have had to make cuts, and it is reasonable to expect that schools will also have to make cuts. There is no doubt that this legislative session will have to make tough decisions.

Gender

The population is almost evenly split on gender, with 49.6 percent male (13,625,413) and 50.4 percent female (13,843,701), but there are more women in Texas than there are men. Like race and ethnicity, this has implications for the economic health of the citizens of Texas. According to the National Women’s Law Center, women in Texas typically make eighty cents for every dollar paid to men, Black women typically make fifty-nine cents for every dollar paid to White men, and Hispanic women typically make forty-five cents for every dollar paid to White men. All of the numbers are lower than the national average. Approximately, twenty-three percent of women aged nineteen to sixty-four are uninsured and almost twenty-five percent of women of reproductive aged nineteen to fifty-four are uninsured. Just over twenty-three percent of women in Texas reported not receiving health care at some point in the last twelve months due to cost. Finally, thirty-seven percent of female-headed households in Texas live in poverty and just over twelve percent of women sixty-five and over live in poverty.[57]

The first large scale, well-organized political movement of women in Texas began with the creation of the Texas chapter of the Woman’s Christian Temperance Union (WCTU) in 1882. Their primary objective was to stop the sale of whiskey, believing as they did that liquor was destroying the family. Through their political organizing, they pushed through state prohibition and helped to secure ratification of the Eighteenth Amendment to the U.S. Constitution in 1919, securing national prohibition. But the larger importance of the WCTU was that its women members learned to organize, to lobby, and to plan political strategies.

A first for the women of Texas was the election of Miriam “Ma” Ferguson as governor in 1924, although she was to be governor in name only. Her husband, Jim “Pa” Ferguson, had resigned as governor before the Senate could take action on impeachment articles due to his questionable dealings and disputes over vetoing appropriations to the University of Texas. Her opponent was Judge Felix Robertson, a staunch supporter of the Ku Klux Klan so the voters of Texas had a choice between a woman or a white supremacist—many referred to it as a choice between the bonnet or the hood! After the election, it was Jim who moved his desk into the governor’s office; it was Jim who extended his hand as politicians entered the governor’s office; and it was Jim who sat

in on meetings of the state's boards and commissions.

Texas women can also boast some other firsts. Barbara Jordan, from Houston, ws the first Black woman to be elected to the Texas Senate in 1966. In 1972, she was elected President Pro Tempore of the Senate, and she became the first Black woman in American history to preside over a state legislative body. Also in 1972, Jordan was elected to the U.S. House of Representatives, becoming the first Black woman from the South to occupy a seat in Congress. Journalists and political analysts dubbed 1992 as "The Year of the Woman," but it arrived two years earlier in Texas, with the election of Governor Ann Richards. Her 1990 campaign against West Texas oilman Clayton Williams was one of the hardest fought and most widely publicized in the nation. It was the Richards campaign that made women's candidacies for the highest offices, in the toughest of political campaigns seem possible.

After the 2020 election, women now hold twenty-seven percent of the legislative seats with a total of forty-eight females. Over the history of the Texas legislature, 5,444 have been men while only 179 have been women. Most women in the legislature are Democrats; there are only thirteen Republican women currently serving. Here in 2021, White men are still overrepresented in the Texas legislature.[58]

Political Implications of Demographic Change

The Democratic Party had significant control over state and local politics from the time the 1876 constitution was ratified until the 1970s. For a period of time during the 1980s and early 1990s there was some two-party competition. The election of George W. Bush in 1994 marked a decisive shift. No Democrats have won any statewide races since that year. But in 2018 and 2020 changes in demographic characteristics, such as race, income, age, the location or movements of people, signaled a real partisan divide between those loyal to the Democratic Party and those loyal to the Republicans.

Going back to the 1960s, East Texas was home to conservative Democrats and a large African American population. The Gulf Coast and Houston was heavily industrialized and was on its way to becoming the center of the oil and gas industry. Central Texas was mostly Anglo and less populated, except for Austin, and Democratic. San Antonio and South Texas was Democratic with the Hispanic population being the majority in most of the counties. North Texas with Dallas and Fort Worth represented the corporate sector and was largely conservative and Republican. West Texas, mostly Anglo except for El Paso was solidly Republican. That Texas no longer exists. The geography of Texas has remained the same, but the political geography has changed over time.

The Urban/Rural Phenomena

Between 2010 and 2018, almost three million people moved to the four metro regions, but only twenty-one percent were Anglo. Additionally, as mentioned earlier in the chapter, more and more people are moving to the urban areas from outside the state, especially California, New York, and Illinois, bringing their political cultures to Texas. More important, the four large metropolitan areas of Houston to San Antonio-Austin and up to Dallas-Fort Worth form the "Texas Triangle."[59] There are eight counties in the Houston area, five counties around both San Antonio and Austin, and nine counties around Dallas and Fort Worth.

Since 2000, the large metro areas have become younger and more diverse and less supportive of Republican presidential candidates while the remaining counties, except for South Texas, have become more White and older and more supportive of the GOP nominees. Democrats from the rural areas are no longer winning elections except in South Texas, along the border, and in some local elections. If you exclude the twenty-eight counties in South Texas, which are still mostly Hispanic, that leaves 199 mostly Anglo counties with smaller metropolitan areas and the rural population with small towns. Equally significant, the suburbs are changing. The suburbs of the 1960s and 1970s were mostly middle and upper class Whites moving to places that were homogenous and like-minded. Today, younger and more diverse people want to be closer to the cities and they bring a different mindset to the changing composition of the suburbs.

In 2016, former President Trump received almost seventy-five percent of the rural vote compared to less than fifty percent of the metro vote. This trend intensified in the 2018 Beto O'Rourke–Ted Cruz race for the U.S. Senate. Despite O'Rourke's appeal to younger voters who bucked predictions of a low youth turnout and voted in record numbers, incumbent Cruz won about seventy-three percent of the rural vote but less than forty-six percent of the metro vote. Cruz lost the metro vote and still won the election, but only by a 2.6 percent margin, the smallest margin since 1996.

Then comes the 2020 election with the trend basically the same, but with a few surprises. In 2020, young people again broke turnout records, so those traditional patterns may be changing.[60] But President Biden's urban wins could not offset the millions of votes in the rural areas that went for Trump. In analyzing the election results, the Texas Tribune broke up the 254 counties in Texas into several groups to explain what happened. In the "Big Blue" counties of Houston's Harris County, San Antonio's Bexar County,

Dallas County, and Austin's Travis County voted Democratic and Biden won by almost a million votes.[61] In the "Six Fast-Changing Suburban" counties outside of Houston (Fort Bend), Austin (Williamson to the north and Hays to the south) and Dallas-Fort Worth (Collin and Denton north of Dallas and Tarrant in Fort Worth), Biden showed improvement over Hillary Clinton's performance in 2016, but still lost to Trump by about 2,500 votes.[62] In 2000, all of these counties were Republican, but by 2016, three of them voted Democratic. In 2020, Biden won four of them, including Williamson, Hays, Fort Bend ,and Tarrant.[63] The "Red Wall" includes the rest of the state, except for the border region, which was solidly Trump country and where he won by 1.7 million votes.[64] As Senator Cruz remarked about his own race, "Historically, the cities have been bright blue and surrounded by bright red doughnuts of Republican suburban voters. What happened in 2018 is that those bright red doughnuts went purple—not blue, but purple."[65]

Diversity and the Hispanic Surprise

As noted earlier in the chapter, data indicated that eightynine percent of Black voters supported President Biden. In the 2020 election, sixty-three percent of Asian Americans also supported President Biden, a group that traditionally votes Republican.The border counties were the big surprise. Biden underperformed in these twenty eight counties. He won with just over 150,000 more votes than Trump but with only seventeen percentage points. In 2016, Clinton won with thirty-three percentage votes.[66]

In the November election, sixty-seven percent of the Hispanic voters supported President Biden. But, the Hispanic voter was not a given for Democrats. Former President Trump performed well in a number of heavily Hispanic populated counties in South Texas. While Zapata County was the only county that went Republican, in the ninety-five percent Hispanic Webb County the Republicans doubled their turnout.

These results have raised more questions than answers. How could a president who used racialized anti-Hispanic rhetoric and was so vocally anti-immigrant do so well in these counties? Ross Barrera, a retired U.S. Army colonel and chair of the Starr County Republican Party said it is a mistake to lump all Hispanics in one column. "It's the national media that uses 'Latino.' It bundles us up with Florida, Doral, Miami. But those places are different than South Texas, and South Texas is different than Los Angeles. Here, people don't say we're Mexican American. We say we're *Tejanos*."[67] They believe that the Trump campaign spoke to them as *Tejanos*— concerned about the oil and gas industry, gun rights, and abortion with positions more in line with the Republican Party. The chairman of the Republican Party of Texas, Allen West, recently addressed the Republican National Hispanic Assembly in February of 2021. He told the audience that the first and last places that he campaigned before the election was the Rio Grande Valley:

> That's what we did in the Rio Grande Valley. So, all of a sudden, you had counties that had never been red for 100 years. Because they heard that it's not about defunding our police, it's not about keeping away safety, security. It's about making sure you have strong families. It's about making sure you have better educational opportunities. It's about making sure that you can be a victor, which is why people come to the United States of America through the front door, not the back door. Because they want to be a part of what I call the 'equality of opportunity' and not the 'equality of outcomes.'"[68]

To be sure, Trump still lost the statewide Hispanic vote by double digits, but things are changing in Texas and the Democrats can no longer count on their vote.

The Gender Gap

One change in particular is women. Latinas, for example, were much more likely to vote Democrat than Latino men. Fifty-nine percent of Latino men voted for Biden, but seventy-five percent of Latinas did.[69] The gender gap is more pronounced among Whites, where White men overwhelmingly favor Republican candidates. But the smaller gap among White men and women in 2016 is better explained by urban vs. rural voters. In 2016 White women in urban areas were more likely to vote for Democratic candidates, a pattern that continued in 2018 and 2020. Age matters, too, with younger White and Hispanic voters, and urban voters generally, more likely to vote for Democratic candidates. The majority religion can influence state politics and seventy-seven percent of Texans say they are Christian. It does not matter whether you are a Democrat or Republican, both Democrats and Republicans say religion plays a role in politics. However, Evangelical White voters—whether male or female—are more likely to favor Republican candidates, especially if the voters live in rural areas. There could be change on the Texas horizon as the Catholic population grows and more people are moving to Texas from other states.

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1.6: Conclusion

In her 2012 book, *As Texas Goes…How the Lone Star State Hijacked the American Agenda*, Gail Collins argued that Texas has shaped federal policy and the U.S. economy. In her words,

> If you look back over the last thirty years or so, most of the major national agenda one way or another, came out of Texas. The savings and loan crisis began with regulations that were based on Texas regulations. Our education policies are based on the No Child Left Behind law, which (President) George W. Bush based on Texas education policy. The same is true for environment, for energy policy. And all the land wars the country has been involved in for my lifetime [Vietnam, the Gulf War, Iraq] have been led by Texas presidents.[70]

Although written almost ten years ago, much of what she said is still true today. Texas still has a big impact on the issues, from family planning policies to gun policies and even to environmental policies and this spills over to other states. She argues that what we do within the states impacts the country as a whole. Working for national goals should be more important than being left alone in our respective states. It will be interesting to see if the Texas blizzard of 2021 will change the mindset of Texas having its own electric utility grid. When people are without power for close to a week, that "leave me alone" attitude is not near as important.

When the economy took a downturn at the end of 2007 with the Great Recession, Texas was one of the last states to suffer and one of the first to recover, something often referred to as "The Texas Miracle."[71] The diversification of the Texas economy certainly contributed to its success, as did a strong tourism industry that includes national parks, miles of beaches on the Gulf of Mexico, and the San Antonio Riverwalk, a resurgent oil and gas industry buoyed by the new fracking technologies, and a sturdy housing market that had not experienced the bubble of price. In a 2018 Forbes article titled "6 Reasons Why Texas Trumps All Other U.S. Economies" it explains why Texas was named Best State for Business by CNBC. First, Texas is a manufacturing powerhouse. During 2017, total manufacturing output was $226.16 billion, or about ten percent of total U.S. manufacturing goods. While the global manufacturing expansion was slowing, Texas was growing. Texas was also the largest exporting state, responsible for almost twenty percent of total U.S. exports, mostly because of the oil and gas industry. In addition, Texas was a global oil superpower, accounting for more than forty percent of the national output. And finally, people want to move to Texas. Four of the fastest growing cities in the U.S. were in Texas which included San Antonio, Frisco, New Braunfels and Pflugerville.[72]

In 2019, Steven John wrote about the booming economy of Texas for *Business Insider*. He cited eleven facts about the Texas economy:

1. If Texas were an independent nation, it would have the tenth largest GDP on earth.
2. Texas has more miles of roads and rail than any other state.
3. Texas produces more than thirteen billion worth of wine each year.
4. Texas is the largest producer of wind power in America.
5. The richest city in Texas has a per-capita income six times higher than the poorest (Albany, Texas, at $162,300).
6. Most Texas exports go south to Mexico.
7. There are about twenty-eight times more businesses operating in Texas than in Wyoming.
8. Texas accounts for ten percent of total manufacturing in the U.S.
9. Texas is home to nearly one million women-owned businesses.
10. Texas produces almost forty percent of America's oil.
11. Texas has enough crude oil reserves to fill more than one million Olympic swimming pools.[73]

And then came the COVID-19 pandemic causing major shutdowns of businesses and education beginning in March of 2020. It is difficult to predict how this will affect Texas in the long run. Trillions of dollars have been poured into the U.S. economy through fiscal and monetary stimulus and the Federal Reserve has cut interest rates to near zero. This stimulus was intended to help for a two to three month period and it has now been a year. More than four million people in Texas have applied for jobless relief with 43,000 unemployment applications filed with the Texas Workforce Commission during Christmas and New Year's. Still, unemployment is inching down from a high of almost fourteen percent when the state shutdown to 7.2 percent at the end of December.[74] Texas has continued to open businesses and schools.

When the Eighty-Seventh Texas Legislature convened in January 2021, the first order of business was the budget for the 2022-2023 cycle. Since the legislature only meets in the odd-numbered years for a total of 140 days, they must project into the future. Much has happened since they last met in 2019 with a booming economy. Fortunately, the Texas Comptroller Glenn Hegar

announced that the decrease in the upcoming budget would not be as bad as was feared during the summer of 2020 in the middle of the pandemic. He estimated that lawmakers will have $113 billion to spend for that -year period but also warned that the economic future of Texas is still uncertain and could change in coming months. A couple of things happened to soften the blow to the budget. Texans were forced to stay home and spend their money in the state. Also, a 2018 Supreme Court ruling allowed for a new online sales tax collection from retailers to go into effect which added an additional $1.3 billion in income. Additionally, the legislature could choose to dip into the Economic Stabilization Fund, known as the rainy day fund, if necessary which has about $11.6 billion in the fund. It is funded through crude oil and natural gas production taxes and was created after the oil crash in the 1980s. Hegar also reminded the legislature of pending problems in the state. It is estimated that 203 of the 254 counties are at risk for scarce water resources. Hurricanes are always a threat to the state. The number of uninsured people are among the highest in the nation and a high poverty rate present challenges. And more than two million households do not have high-speed internet, which has become a requirement for education and the workforce during the pandemic.[75]

There are challenges for the legislature and they will have to look carefully at all of the numbers and problems as they prepare the budget. But as Republican Chair of the Senate Finance Committee State Senator Jane Nelson said, “the revenue estimate highlights the resiliency of our Texas economy. Tough decisions remain, but I am confident we n pass a budget that meets our essential needs, maintains our commitment to education and follows the principle of fiscal responsibility that put us in a stronger position than other states to withstand this unprecedented pandemic.”[76] Of course, this was also before the blizzard of 2021!

Critical Thinking Questions

1. Compare and contrast the early industries that shaped Texas with the current industries.

   Answer

   The early industries in Texas included cotton, ranching, and oil. While all of these industries are still important, newer industries have emerged. Texas realized that being highly dependent on oil was risky, as prices fluctuate based on demand and this continues to be the case. Texas realized that it needed to diversify its economy. High technology, including computers, aerospace, and telecommunications have become important with companies like Dell Computer, AT&T, and NASA. Houston has expanded the medical center and Texas is becoming more known for attracting tourists.

2. Explain how Texas is considered to have a traditional and individualistic culture.

   Answer

   Texas wants the government to take a minimal role, only maintaining order. Texas has also placed a lot of emphasis on individuals taking the lead in pursuing their own goals with little interference from the government. As such, Texas is known for having a low tax/low service state.

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2: THE AMERICAN FEDERAL SYSTEM

Learning Objectives

After you have read this chapter, you should be able to:

- Explain the purpose of a constitution.
- Describe how the constitution structures power
- Compare federal systems with other types that could exist, including confederal and unitary systems.
- Explain the division of powers and the tension points between the states and the federal government in a federal system.
- Trace how the relationship between the national and state governments have changed over time.

The arrival of the COVID-19 virus in the United States in early 2020 did not just impact the national government. It impacted each of the states, cities, counties, and school districts around the nation, if not—in some fashion—every single one of the more than 90,000 local governments spread around the nation. As the virus spread, each of these governments was tasked with formulating a response suited to its jurisdiction, but also in sync with the responses of the governments that adjoined it, as well as those that overlapped it.

Schools had to determine how best to continue to provide education to their students in a manner that would stop the spread of the virus, many went fully online, as you may know. Counties and cities had to do the same regarding the services they provided. Counties had the added task of ensuring adequate access to hospital care not only to victims of the virus, but to all others as well. Cities, counties and the state had to make decisions about whether businesses and other public gatherings should be limited, or shut down completely. Often the decisions made by one conflicted with the decisions made by others. And the national government was tasked with formulating and implementing a response to the virus itself, encouraging the rapid development of a vaccine, and an equally rapid distribution of it. The elected officials in all of these governing units had to do so under the watchful and critical eyes of the mass public, with the knowledge that any missteps they made could lead to defeat in their next election.



Figure 2.1: The United States and the Texas flags are flown together to represent the sovereign status of each in a federal system. SOURCE: “US and Texas Flags" by CC Rogers. Creative Commons License: Attribution 2.0 Generic (CC BY 2.0). Used by permission.

Sound confusing? It should, because it is. But such is life in a federal system where responsibility for governance is allocated to institutions on the national, state, and local levels (Figure 2.1). And where those responsibilities vary depending upon which are more suited to need of the nation, state, or locality. However, the more you learn about the specific nature of these relationships, the more they are a bit easier to understand. The purpose of this chapter is to help you make sense of this confusion, because just as pandemics happen, so do a multitude of other unforeseen issues that dominate the news in the near and not so near future.

2.1: Constitutional Roots of Federalism
2.2: What Is Federalism?
2.3: The Role of the States in the American Federal System
2.4: Expanded Federal Government- The Stages of Federalism
2.5: Recent Federalism Cases involving Texas
2.6: Conclusion

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2.1: Constitutional Roots of Federalism

The history of Anglo-American constitutions can be traced back to the Magna Carta, a document the cruel and all-powerful King John of England was compelled to sign in 1215 under threat of violent rebellion. The Magna Carta placed limits on his rule, and by signing it the King agreed he was not above the law and established the political rights of the people. After the Magna Carta, governing in Britain, including in their colonies in America, would follow a process more likely to protect the rights and liberties of the people. One such right, for example, was the writ of habeas corpus, meaning the king could no longer imprison anyone randomly. He had to agree that a reason for detainment would be provided or the person detained had to be released. He also had to agree to allow twenty-five members of the nobility to assemble and oversee his actions in order to ensure his compliance to the law. This would evolve into Parliament, a separate, equally powerful governing institution. The Magna Carta heavily influenced the United States, and its constitution codified American distrust of excessive governmental power.

At its simplest, a constitution is a written document that attempts to limit what might otherwise be absolute, arbitrary, and unrestrained power by a ruler: The purpose of a constitution is not so much to establish power, but to place limits on it. A **constitution** is a body of fundamental principles or established precedents according to which a nation or state is governed. It does the following:

- establishes the basis of governing authority;
- outlines the structure of the government;
- defines and limits those powers;
- clarifies the rights of the people.

Perhaps the most important thing a constitution does is tell us who is in charge. Constitutions contain language that demand that certain things either must be done, or cannot be done. It is appropriate then to ask, on whose authority? If you are to pay taxes, who or what has the right to collect them? Constitutions address this issue by clarifying where **sovereignty**— meaning supreme legitimate authority—exists in a community. When the power is derived from the people, this is referred to as **popular sovereignty**, and it simply means that the people rule themselves. Such a system is called a **republic**. The structure of the United States Constitution, written in the summer of 1787, established the basis of a government with power derived from the people, rather than a king or other ruler: "We, the people of the United States . . . do ordain and establish this constitution for the United States of America."[3]

But unlike a pure democracy, sometimes called a direct democracy, where every citizen votes directly on all the issues, the political power that is established in a **republican government**, resides in the will of the people as expressed through their elected representatives. This is called a the general population of making calm, reasonable decisions about topical matters. They believed they were likely to fall for misinformation and to make decisions on the spur of the moment based on passion. The framers of the U.S. Constitution protected the representative model by including language that guaranteed each state's constitution would establish a republican form of government: "The United States shall guarantee to every state in this union, a republican form of government."[4] In accordance with this **Guarantee Clause**, each state's constitution establishes a republican government, including the state constitution of Texas:

> All political power is inherent in the people, and all free governments are founded on their authority and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and subject to this limitation only, they have at all times the inalienable right to alter, reform, or abolish their government in such manner as they may think expedient.[5]

The Texas Constitution will be discussed in the next chapter, but here it is important to establish that the roots of federalism lay in the republican government established by the U.S. Constitution.

Given that the framers of the U.S. Constitutions were suspicious of concentrated power— James Madison argued that the concentration of power is the very definition of tyranny—the constitution established the structure of government by separating governmental powers according to the legislative, executive, and judicial functions of government. This **separation of powers** is intended to make the branches of government fundamentally different and largely independent.

- Legislature: Congress is split into a House of Representatives and a Senate, which are intended to argue, and possibly compromise, to pass laws that bring in a variety of voices. This is a **bicameral** (two chamber) model of the legislature.
- Executive: On the national level, executive power is vested in the president and is designed to implement laws passed by the

legislature.
- Judicial: Judicial power is designed evaluate and interpret laws and determine how laws should be applied. On a national level, judges are appointed.

The separation is maintained primarily by the ability of each branch to push back against the powers of the other two. This is called the **checks and balances**. As James Madison describes it, the rule of thumb underlying this system is the idea that the members of each institution are ambitious by nature, and will do what they can to expand their power.[6] While this normally is a problem, a proper design of the powers of each can provide a defense for each branch against the attacks by the other two.[7] The result, while full of conflict, is a proper constitutional balance among the three.[8]

Limiting power is the heart of what a constitution is created to do. An absolute monarch, dictator, or tyrant has no need for a constitution. They rule as they choose without limits. In addition to limiting power through the structure of the system itself, that is, by separating it into three branches and allowing each to check each other, the U.S. Constitution places further limits on a centralized concentration power by dividing power between the national and state governments, which is the system called *federalism* that is the subject of this chapter.

The United States Declaration of Independence states that the rights of the people are "self-evident" and inalienable, meaning they cannot be taken away by a government because: "These rights are granted by a creator, and are unalienable. Among these are life, liberty, and the pursuit of happiness. That to secure these rights, Governments are instituted among Men . . . ."[9] How does the U.S. Constitution protect these rights? Fearful as most were of a powerful centralized government that did not respect the principle of individual liberty, Congress added a Bill of Rights—the first ten Amendments of the U.S. Constitution. The Bill of Rights provides a specific list, with the suggestion that others exist as well, and places limits on governing institutions. There are certain laws that Congress cannot pass. Law enforcement cannot arrest and prosecute people unless they follow certain procedures. Judges must ensure that defendants in their courts are provided guarantees, such as knowing what they are on trial for. Since the powers of states were "many and undefined"[10] clear limits on their powers were in fact necessary.

Article 5 of the U.S. Constitution makes states part of the amendment process, much like they were part of the ratification process. If the legislatures of three-fourths of the states ratify a constitutional amendment, it passes. This was the same fraction of state constitutional conventions needed to ratify the original U.S. Constitution. This has proven to be a very high bar however. Only twenty-seven amendments have been added to the document since 1787. Contrast this with over 500 amendments added to the 1876 Texas Constitution. The lack of a significant number of new amendments doesn't mean that the national constitution is static, however. As it turns out, the flexibility in the language of some of its major clauses has led to periodic rethinking of their meaning. Along with it has been the occasional readjustment of the relationship between the national and state governments.

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1. U.S. Const. art IV, § 4.
2. Tex. Const. art I § 2
3. U.S. Const prmble
4. U.S. Const. art IV, § 4
5. Tex. Const. art I § 2.
6. James Madison, Federalist Paper 51 ("The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments"), 1788, https://billofrightsinstitute.org/pr...deralist-no-51.
7. James Madison, Federalist Paper 51, https://billofrightsinstitute.org/pr...deralist-no-51.
8. James Madison, Federalist Paper 51, https://billofrightsinstitute.org/pr...deralist-no-51.
9. Thomas Jefferson, et al,. Declaration of Independence, July 4, 1776, https://www.loc.gov/item/mtjbib000159/
10. James Madison, Federalist Paper No. 45 ("The Alleged Danger From the Powers of the Union to the State Governments Considered"), 1788, https://guides.loc.gov/federalistpap...apper-25493409.

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2.2: What Is Federalism?

Federalism in the United States is a division of the powers and function of government into three layers: the national (or *federal*), state, and local. Each layer of government has defined responsibilities, though many overlap. The national government, as originally established and expressed in the Constitution, focused on the development of interstate and international commerce, and internal and external security. States were responsible for everything else, primarily what are called the police powers, meaning the protection of the health, safety, welfare, and morals of the community.

In order to assist with the implementation of these laws states have created a large number of local governments. This results in a highly complex governing system. It includes a national government, fifty state governments, and over 90,000 local governments. With this many governments, it is important for the relationship to be established between each. That is the purpose of the U.S. Constitution, the state constitutions, and the city charters, to clarify their relative authority, responsibilities, and functions. The relationship between these levels of government—the national, state, and local—vary depending upon their relationship to the people.

Under the current constitutional structure, the governments of the nation and state are based on the authority of the people. In governments based on the authority of the people— called *popular sovereignty* and discussed earlier in the chapter—the power rests directly with people. These governments are "ordained and established" by the people.[11] Those that are created by another government, meaning that they are created by that government and not the people, are subservient to that government. For example, local governments are either created by the states, or in the case of cities, allowed to govern themselves by the states. The precise nature of the relationship can take three forms: unitary, confederacy, and federal. There are aspects of each in American government.

Unitary Systems

In a **unitary system**, a central government has sovereign power and creates component governments for various purposes, mostly to actually enforce the law. For example, the relationship that existed between the British monarch and the American colonies was unitary. The colonies were each established under the authority of charters—documents that allowed the colonies the legal right to exist as granted by the monarch. The charters determined how they would be governed and the nature of their powers. Encroachments by the crown over the colonies in the late eighteenth century ultimately led to the revolutionary war and independence. The charters then provided the basis for the new state constitutions. Given the experiences the new states had as colonies under the British crown, they had little interest in reestablishing a unitary system. They were independent from each other, and they wished to maintain that. The Declaration of Independence concludes with the following statement:

> These United Colonies are, and of right ought to be, *free and independent states*; that they are absolved from all allegiance to the British crown and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved.[12] (emphasis added)

They had little interest in creating an independent national government at all. Instead they created a confederate government.

Confederal Systems

In a **confederal system**, the relationship between a central government and its component parts is reversed. The component parts of a governing system create, and have control over, a central government that is charged with coordinating their mutual relations. This was the *de facto* relationship once the colonies declared themselves independent states in the Declaration of Independence (Figure 2.2.2). Each state was independent, including in its ability to coin money, conduct international treaties, and create a military. Agreements among the states were voluntary. While the First Continental Congress met to cooperatively organize resistance to Britain, the Second Continental Congress drafted the Articles of Confederation that became the legal relationship that existed under the Articles of Confederation until the U.S. Constitution in 1789 replaced the Articles of Confederation. The Articles only established a Congress with no independent power. It was composed of teams of delegates, sent by the legislatures of each state for yearly terms. These teams could be recalled and replaced by those legislatures at any time, meaning the delegates had no independent voice. They spoke for the legislatures and could be punished if they misspoke.



Figure 2.2.2: Benjamin Franklin created this woodcut of a segmented snake with the initials of the original thirteen colonies to exhort them to join together to fight for independence. SOURCE: Library of Congress

In addition, there was no executive or judiciary on the national level. Any law passed by the national congress could only be implemented by the states, any disputes between the states could not be resolved by a neutral judicial institution, because none had been created. States had to work out disputes between them, and since the framework of the Articles did not facilitate resolution, an *ad hoc* meeting had to be called when necessary to find a solution. This unsatisfactory situation led to the request that state legislatures send delegates to Philadelphia in the summer of 1787 to revise the Articles at what became the Constitutional Convention.

At that meeting—held in secret—Virginia's Edmund Randolph began by outlining the deficiencies of the confederated form of government, and in turn what a national government should do:

- provide security against foreign invasion;
- settle quarrels between the states;
- promote commerce;
- pushback on encroachments from the state;
- wield power over the states.

The Convention would scrap the Articles and build a new constitution from scratch premised on the claim that the power of the national government was equal to that of the states. This federal system that emerged from the Constitutional Convention is the system in operation today.

Federal Systems

Advocates for a federal system began with what was then the controversial claim that the national government rested on the authority of the people of the United States, just as each of the state governments rested on the authority of their respective people. The relevant language is contained in the preambles to both the U.S. and Texas constitutions:

- U.S. Constitution: "We the people .... ordain and establish this Constitution of the United States of America."[13]
- Texas Constitution: "We the people of Texas do ordain and establish this constitution."[14]

This language creates tension however. How would disputes be resolved between the national and state governments? To help address this tension, the United States Constitution contains a **Supremacy Clause**, which establishes that federal laws supersede state laws when they come into conflict. The Supremacy Clause is found in Article 6, Section 2:

> This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.[15]

In addition, Article 6, Section 3, of the U.S. Constitution requires state legislatures, executives, and judicial officers to swear an oath to support the national constitution:

> The senators and representatives before-mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution.[16]

Neither the Supremacy Clause nor the loyalty oath confers absolute authority to the national government, however. They simple state that the allocation of power in the U.S. Constitution is authoritative.

Defining and Limiting Power

Despite the fact that the delegates met to establish a stronger national government, they did not intend to make the states powerless. The states were concerned that without specific limits on the national government, its powers would grow. James Madison and others who drafted the U.S. Constitution argued that this concern was unfounded given that the U.S. Constitution already limited national power:

> The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation and foreign commerce. . . . The powers reserved to the several States will extend to all the objects which in the ordinary course of affairs, concern the lives and liberties, and properties of the people, and the internal order, improvement and prosperity of the State.[17]

But concerns were such that ten amendments were added to the original constitution, at the request of a number of states. the **Tenth Amendment** defined the allocation of powers within the federal system, and also included significant restrictions on the powers of the national government: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”[18] While the states and the federal government share certain powers (called **concurrent powers**), the most common of which is the power to tax, the Tenth Amendment divides the powers between the states and the federal government, limiting the powers of the federal government to those that are either expressly delegated or implied in the U.S. Constitution itself. All else, according to the Tenth Amendment, is reserved to the states, not accounting for those powers that are expressly prohibited.

Delegated Powers

Delegated powers give specific powers to the branches of the national government and limit what the branches can do. If there is no constitutional grant of authority for the national government to engage in a specific enterprise, they cannot do it. The United States Constitution states what laws can be passed by Congress, clarifies the responsibilities of the president, and lists the types of cases that can be heard by the national courts. These include court cases brought by, or against, the states. Texas often brings lawsuits against the national government.

Implied Powers

Several of the clauses that delegate powers to Congress are highly specific, such as those relating to bankruptcy, post offices, pirates, and raising a navy. Some are not, and can be the subject of debate. These are the elastic clauses, and the powers that are based on them are called the **implied powers**. The three that stand out are the **Necessary and Proper Clause**, the **Commerce Clause**, and the **General Welfare Clause**. The Necessary and Proper Clause allows the U.S. Congress to make laws that are “necessary and proper” to the national government carrying out its responsibilities.[19] The Commerce Clause has been interpreted to allow for the national government to regulate interstate economic activity. The General Welfare Clause covers some of the largest federal programs in the United States: Social Security; Medicare; and Medicaid.

Reserved Powers

The **reserved powers** comprise anything a state chooses to do, as long as it is not prohibited to it by the U.S. Constitution. Proponents of an expanded view of the Tenth Amendment argue that there are benefits to allowing the states free reign to experiment with public policy. They can act as “laboratories of democracy”[20] and allow policy options to be tested out. Texas was

one of the first states to experiment with placing limits on non-economic (pain and suffering) damages as a result of lawsuits. Other states have experimented with legalizing marijuana.

Prohibited Powers

Federalism is based on the theory that different levels of government are best at doing different things. The U.S. Constitution includes explicitly **prohibited powers** that restrict the federal government from interfering in a state's management of its responsibilities in protecting the health, welfare, and safety of its citizens. For example, it is a state's responsibility to protect the safety of its citizens so policing falls to the states and the federal government cannot suspend habeas corpus (protection from unlawful imprisonment). By the same principle, the states cannot interfere with the affairs of the nation. In the United States, the national government was established to promote interstate and international commerce, and to provide internal and external security. Therefore, states are prohibited from interfering with those powers by coining money, entering into international treaties, or keeping troops in times of peace. But states were given the power to do most anything else.

Over the country's history, twenty-seven amendments have been added to the United States Constitution that have placed further limits on the states.

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11. U.S. Const prmble.
12. Thomas Jefferson, et al,. Declaration of Independence, July 4, 1776, https://www.loc.gov/item/mtjbib000159/.
13. U.S. Const. pmbl
14. Tex. Const. pmbl.
15. U.S. Const. art VI, § 2.
16. U.S. Const. art VI, § 3
17. James Madison, Federalist Paper No. 45 ("The Alleged Danger From the Powers of the Union to the State Governments Considered"), 1788, https://guides.loc.gov/federalistpap...apper-25493409.
18. U.S. Const. amend X.
19. U.S. Const, art I, § 8.
20. New State Ice Co. v. Liebmann, 285 U.S. 262, Justice Louis Brandeis, dissent, 1932

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2.3: The Role of the States in the American Federal System

In keeping with the spirit of federalism, and the idea that certain things are best done at the state and local levels, the United States Constitution allocates certain responsibilities to the states. These primarily concern the right to vote and the running of elections to the U.S. Congress and the presidency. The implementation of these are then handed down to the local levels, primarily the counties, that are then responsible for registering voters, conducting elections, and tabulating results (Figure 2.3.3).

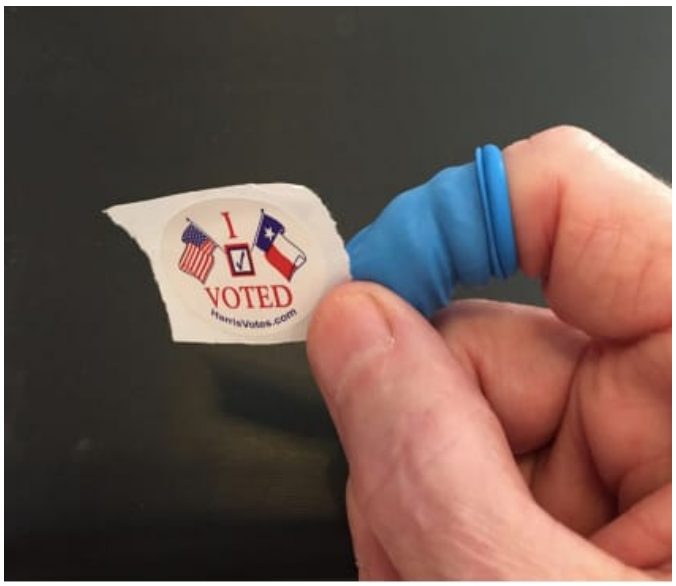


Figure 2.3.3: In this "I Voted" sticker, the county is identified by "HarrisVotes," the state by the Texas flag, and the fact that this is a national election by the American flag. SOURCE: "Voted early, July 8, 2020" by Patrick Feller is licensed under CC BY 2.0.

This should not be surprising since the constitution was written by delegates sent from the states. Retaining power over those who are elected to national office, in addition to who was able to vote, were two principle ways states could retain power overt the national government. These and other roles the states are given in the United States Constitution have been modified by later amendments.

Legislative Power and the States

The number of representatives in the U.S. House of Representatives is apportioned to each state according to their population as determined in a census held every ten years. Two senators are elected from each state to the U.S. Senate.

House of Representatives

The U.S. Constitution grants significant power over Congress to the state legislatures. Until the ratification of the Fifteenth Amendment following the Civil War, the state controlled who could vote and guaranteed that if you could vote for representatives to the state legislature, you could vote for representatives to the U.S. House of Representatives. The Fifteenth Amendment was passed to prevent states from denying the right to vote based on "race, color, or previous condition of servitude."[21] These amendments also delegated to Congress the power to enforce these amendments. States can still place limits on voting beyond these specific categories. Texas continues to limit voting for those with felony convictions who have yet to complete their sentences.

The number of representatives in the U.S. House of Representatives is apportioned to each state according to their population as determined in a census held every ten years. Based on the most recent 2020 census, Texas will add two seats to its congressional delegation. Once the census has been counted, it is then the responsibility of each state legislature to draw the districts each representative will be elected from and then represent. Legislators long ago discovered that districts can be drawn in ways that can influence the elections results. This process has since been called **gerrymandering**, and it can be used to minimize the power

of groups based on Party membership. The **Equal Protection Clause** of the Fourteenth Amendment, added to the Constitution after the Civil War, establishes "equal protection" for all citizens:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. [22]

The Equal Protection Clause has been interpreted to prevent the states from drawing districts in a manner that is discriminatory in regards to race. Claims continue that redistricting has been used to abridge rights based on race, however, and controversy continues regarding the redistricting practice overall.

The Senate

As originally designed, the United States Senate was to represent the interests of the governments of the states. The people of the states were represented in the House, which is why they were directly elected. This is why U.S. senators were initially selected by the legislatures of each of the states. Two per state, each in one of three classes elected for overlapping six year terms. Political disputes within some states led to some positions remaining vacant for long periods of time. This, along with efforts to enhance the connection between the general population and elected officials led to the passage of the Seventeenth Amendment and the direct election of senators.

The direct influence of the states remains in the process for filling vacancies. The governor of the state can make a temporary replacement, but then must call a special election to fill out the rest of the term. The governor has no power to make a similar replacement for the House of Representatives. All they can do is make call a special election which allows the people of the district to make the replacement.

Elections

Section 4 of Article 1 of the U.S. Constitution expressly delegates the power to run congressional elections to the states. They have the power to pass and enforce all laws related to elections, these can be found in the Texas Elections Code. This makes an important point clear: There is no such things as a national election. There are indeed elections to national office, but these are conducted by the states, though they must abide by rules passed by the national government. In addition, both chambers of Congress can review the qualifications of those elected by the states, as well as the circumstances surrounding their elections, to determine whether they should be allowed to hold office. Congress can refuse to sit those they find illegible.

Executive Power: Presidential Electors and State Militias

As with congressional elections, the selection of the presidents is up to the states. They do so by selecting **presidential electors** every four years, in whatever manner they deem appropriate. Their votes are sent to the Senate to be counted in early January following the convening of a newly elected Senate. States are also responsible for creating militias that are subject to be called forth by the national government under the authority of the president acting as commander in chief.

Jurisdiction of the National Courts

Even those concerned that the United States Constitution gave too much power to the national government agreed with the need for a national judiciary. This allowed for the reconciliation of disputes involving states. The court's jurisdiction included cases involving lawsuits between states, and those between the national and state governments. Texas habitually sues the national government for what it sees as infractions of its rights, and the national government often sues Texas for non-compliance with national laws and regulations.

More controversially, the U.S. Constitution allows citizens in one state to sue their state in the federal courts. In the original constitution, citizens of one state could sue other state governments in federal courts. After an unsuccessful attempt by a citizen of North Carolina to collect after filing suit against the state of Georgia for payment of revolutionary war debt, the Eleventh Amendment was ratified, which disallowed the practice.

Citizens can still sue their own states, however, for the violation of federal laws and constitutional rights. Many of the landmark

cases involving civil rights violations were initiated in Texas by African-American, Latino, and LGBTQ citizens alleging state violations of nationally defined rights, primarily the denial of the equal protection of the laws under the Fourteenth Amendment. Over its history, the government of Texas has been sued for not upholding the Fourteenth Amendment. Some examples include: *Smith v. Allwright* (1944), which made racial discrimination illegal for political parties; *Sweatt v. Painter* (1950), which forced the University of Texas to admit African Americans to its law school; *Roe v. Wade* (1973), which protected a woman's right to choose an abortion; and *Lawrence v. Texas* (2003), which legalized consensual sexual intimacy by those of the same sex.

In recent years some states, including Texas, have pushed a doctrine called **state sovereign immunity**. State sovereign immunity holds that as sovereign entities only the state itself can allow lawsuits against it as remedies for violations of rights. The national government cannot. This legal tactic has had limited success. The state of Maine was able to push back against a lawsuit filed against it in federal court by prison guards alleging violations of overtime pay as required by the Fair Labor Standards Act of 1938. However, the state of Tennessee was unable to do so when sued for violations of the Americans with Disabilities Act by individuals with disabilities who had to crawl up several flights of stairs because the courthouse where their cases were being heard lacked elevators.

What Do States Owe Each Other?

An entire article in the U.S. Constitution—Article 4—is dedicated to the responsibilities each state has to each other, responsibilities that are enforceable by the national government. It outlines the responsibilities states have to each other and the guarantees they have from the national government.

Full Faith and Credit

The public acts, records, and judicial proceedings entered into in any one state have to be respected by all other states. This is to ensure consistency with all the legal decisions made across the nation. One person cannot receive an unsatisfactory decision on one state, and then move to another to have it overturned. It can also lead to controversy, as it did when Texas refused to recognize same sex marriages performed in other states until required to do so by the United State Supreme Court.

Privileges and Immunities

The American federal system begins with the premise that people have fundamental rights and the purpose of a government is to secure them. The phrase "privileges and immunities"[23] loosely refers to the fundamental rights possessed by Americans, which means states cannot interfere with travel from state to state, or discriminate between citizens and noncitizens of the state in employment, taxation, or the acquisition of property. This can also include the right to access governing institutions. Those that are generally available across the nation cannot be restricted to individuals by any state.

Delivering Up Fugitives

No state can set itself up as a safe space for criminals fleeing from any other state. If requested by the governor of the state where the crime was committed, the state where the criminal resides much be extradited. Until the ratification of the Thirteenth Amendment, this also applied to people escaping enslavement and indentured servitude.

Furthermore, the national constitution allows for the addition of new states, ensures the preservation of existing state boundaries, and guarantees to every state a republican form of government, and security from insurrections and invasions. It is also made clear that the federal government can pass all laws necessary to rule in federal territories. the occasional readjustment of the relationship between the national and state governments.

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21. U.S. Const. amend XV, § 1.
22. U.S. Const amend XIV, § 2
23. U.S. Const art IV, § 2

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2.4: Expanded Federal Government- The Stages of Federalism

The relationship between the state and national government has not been stable. It has changed over history due to a variety of factors including the growth of the nation, the development of communications and transportations technologies, and ebbs and flows of the various political forces over time. Changes in constitutional interpretation also plays a significant role. The language in the U.S. Constitution is vague enough to allow for disputes over interpretation, as well as reinterpretation over time.

Scholars tend to divide the history of federalism into three eras: dual federalism (1789– 1933); cooperative federalism (1933–1981); and New Federalism (1981–present). The dates that mark the transitions from each era coincide with the elections of perhaps the two most transformative presidencies in the twentieth century: Franklin Delano Roosevelt (1933–1945) and Ronald Reagan (1981–1989).

Dual Federalism

The guiding principle of **dual federalism** was that the national and state governments are two separate spheres and should focus on their respective spheres only. James Madison, whose advocacy for the ratification of the U.S. Constitution included essays in *The Federalist Papers*, clarified their relative functions in *Federalist 45:*

> The powers delegated to . . . the federal government . . . will be exercised principally on external objects, as war, peace, negotiation and foreign commerce. . . . The powers reserved to the several States will extend to all the objects which in the ordinary course of affairs, concern the lives and liberties, and properties of the people, and the internal order, improvement and prosperity of the State.[24]

The powers of the national government facilitated America's rapid westward expansion. This entailed acquiring rights to the land from European powers, clearing it of native populations, and enticing people from the east to settle there by offering generous land grants. As local communities developed, and federal territories turned to states, governments were established that could allow these areas to rule themselves. Under dual federalism, these governments had sole authority in determining how best to care for their citizens. Often this was due to the simple fact that the national government had not yet developed the institutions that could do so.

Dual federalism was relatively easy to maintain during a period when interstate commerce was not common., transportation and communications were slow, and the institutions of the national government were just being built. This was changing however. Patents were granted for a variety of inventions making both transportation and communications easier. The Supreme Court was also making decisions which clarified the powers of the federal government. Prior to the Civil War this was the dominant concern regarding the federalism. Relevant cases include the *Martin v. Hunter's Lessee* (1816), *McCulloch v. Maryland* (1819), and *Gibbons v. Ogden* (1824).

In *Martin v Hunter's Lessee* (1816) the court decided a case involving land confiscated by the state of Virginia from a loyalist (a supporter of Britain during the revolutionary war) during the war. The confiscation was overturned in the Treaty of Paris, but Virginia refused to comply. The Supreme Court ultimately argued that the Supremacy Clause implied that the treaty took precedence over state law, and the land had to be returned.

McCulloch v. Maryland (1819) involved Maryland's effort to drive the national government out of the banking business. Congress chartered a national bank in 1791, and re-charted it in 1816. Maryland responded in two ways, it imposed a tax on the bank and filed suit in federal court arguing that Congress lacked the authority to charter a bank since it was not expressly delegated in the U.S. Constitution. The Supreme Court held that the Necessary and Proper Clause did allow Congress to charter a bank, and the Supremacy Clause did not allow states to tax the national government.

In *Gibbons v Ogden* (1824) the court faced a case involving transportation over the Hudson River between New Jersey and New York. Both the state of New York and the United States claimed the right to regulate it. The Supreme Court ultimately agreed with the argument that the Commerce Clause gave the power to the national government.

Finally, a confrontation between the federal government and South Carolina led to the **Nullification Crisis**. The national

government passed laws establishing tariffs in 1828 and 1832 on imported goods, sometimes by as much as sixty-two percent. Meant to protect struggling manufacturers in the North and farmers in the West against the competition of low-cost imports, the southern states bitterly opposed the law (which they called the *Tariff of Abominations*) for placing what they believed was an unfair burden on them. South Carolina's John Calhoun developed the doctrine of state nullification—that states had the right to nullify (reject) federal laws within their boundaries—on the premise that the states created the national government, and as a result, each state has the power to determine the proper extent of national power. The courts ruled against this argument by invoking the Supremacy Clause, which holds that all governments in the United States should be in accordance with the U.S. Constitution and that the federal courts have the final authority to determine the meaning of the document. The crisis was ultimately averted through an agreement that the tariffs would gradually return to pre-1828 levels, but the crisis foreshadowed the Civil War. By declaring the right to nullify federal laws, southern states held state law above federal law, a premise that led them to secede from the Union to protect the institution of slavery.

After the Civil War, a similar decision was made in 1870 when a case involving Texas, and the legality of the laws its legislature passed when it was a member of the Confederacy, reached the court. The case was *Texas v. White* (1869) and it concerned the sale of Texas land by the Confederacy. The newly reconfigured Texas legislature, now once again as a member of the United States, claimed the sale was illegal and wanted the proceeds of the sale returned. The Supreme Court agreed declaring that the Union was perpetual, and the states had no power of secession. The Confederacy was never, legally, an independent nation.

Dual Federalism Fades

At the end of the Civil War, amendments were added to the constitution that laid the foundation for future expansions of national power. The most significant of these was the Fourteenth Amendment, which for the first time clarified the relationship between individuals and the national government. The Fourteenth Amendment held that if you were born in one of the states, whether you had been enslaved or not, you were a citizen of the United States. The Amendment overturned the Supreme Court's ruling in 1854 that Dred Scott—as an enslaved African American—was not a citizen. [25] The Fourteenth Amendment also includes the Equal Protection Clause, discussed earlier in the chapter. Much like the elastic clauses of the implied powers, the equal protection clause can be interpreted loosely, and after the Civil War, **Black Codes** evolved into **Jim Crow** laws that continued to allow states like Texas to discriminate against people based on race in such areas as education, employment, marriage, access to public accommodation, and transportation. The segregationist laws of the late nineteenth and early twentieth century, as well as the White terrorism that included the Ku Klux Klan and lynching, would eventually bring federal intervention into how individuals were treated at the state and local levels, but under dual federalism policing was a sovereign obligation of the state.

During the same period, known as the *Progressive Era*, technology improved to the point where information began to flow instantaneously via telegraphs and telephones, and railroads made coast to coast travel available (Figure 2.4.4). It was easy not only for commerce to cross state borders, but crime as well. Problems related to health, safety, welfare, and morals were no longer just state and local. They crossed state lines, and impacted commerce. Consequently, state and local governments were not sufficient to address them. National laws were passed in a variety of areas which had previously been reserved mostly to the states, and the Commerce Clause increasingly became a constitutional justification for this reform legislation. Progressive Era reformers argued that as long as the activity involved interstate commerce, federal intervention was ok. Often these laws were challenged. Sometimes the Supreme Court found them constitutional, sometimes it did not, but in Texas reform of the railroad industry was a particular goal of farmers hurt by falling prices and the capricious price gauging of the railroads that took their goods to market.



Figure 2.4.4: Steam powered Southern Pacific's Engine 741 passing through Belt Junction in Dallas on June 22m 1952. This mixed passenger and freight train from Beaumont, Texas, will continue to Union Terminal. SOURCE: Public Domain, "Southern Pacific train passing through Dallas]"by aeroman3 is marked with CC PDM, 1.0.

Interstate Commerce Act of 1887

By the late nineteenth century, railroad corporations had attained a significant amount of wealth, and with it, political power across the nation. The power of railroad corporations in Texas led to separate articles in the 1876 Texas Constitution regulating both railroads and private corporations. The goal was to enhance competition in the industry, which undermined its profitability. But in 1886 the United States Supreme struck down state laws regulating railroads as violating the Commerce Clause, which then led to national government involvement.

White Slave Traffic Act of 1910

Throughout the nineteenth century cities across the United States struggled with prostitution, and other vices. Many cities allowed for its legality in designated areas, but the increase in urban populations, often driven by women moving in from rural areas led to concerns that participation in prostitution was not by choice. This coincided with a growth in organized crime that tied criminal activity in cities in one state, with those in another. This activity across state lines, along with its commercial nature—whether it was legal or not—led to the passage of national legislation addressing the transportation of women to travel across state lines for "prostitution or debauchery, or for any immoral purpose."[26] This term was loosely defined to refer to whatever law enforcement wished, and it led to expansion of a national law enforcement apparatus.

Keating-Owen Child Labor Act of 1916

The use of child labor in manufacturing and mining, among other areas, was becoming an increasing concern across the nation. State legislatures were finding it difficult to pass laws addressing child labor, however, due to the political power of multi-state corporations. The law prohibited interstate trade in the products of child labor. It was quickly found unconstitutional since the regulation of labor is not expressly granted to the national government and cannot be implied to it under the Commerce Clause.

These are only some of the laws passed in the decades of the Progressive Era. Other included the Pure Food and Drug Act, the Federal Reserve Act, the Income Tax Amendment, and the Nineteenth Amendment, which gave women the right to vote. Much of the expansion of national power, however, was piece by piece. There was no coordinated plan to change the overall orientation of the national government towards the states largely because there was no impetus to do so. The stock market crash of 1929 and the ensuing economic collapse would change that, however.

Cooperative Federalism

The Great Depression ushered in the election of Franklin Delano Roosevelt in 1932. FDR's predecessor, Herbert Hoover, adhered to dual federalism positions and refused to offer federal assistance to unemployed people, as that was a responsibility of state and local governments. His solutions involved traditional activities of the national government, such as raising tariffs, which had the opposite effect. At that time FDR was governor of New York, and began implementing programs to aid the unemployed, providing a blueprint of what he would do as president. The ***New Deal*** Roosevelt served as president from 1933 until his death in 1945, passing a series of laws, collectively known as the **New Deal**. These laws were a national response to the enormous pressures currently placed on the states alone, which were still fully in charge of the welfare of their citizens. **Cooperative federalism** emerged to address the widespread poverty across the nation (Figure 2.4.5). It involved works projects and efforts to prop up the price of farm products, as well as direct support to exhausted state and local government.



Figure 2.4.5: Wife and children of a sharecropper in Washington County, Arkansas, during the Great Depression, ca. 1935 SOURCE: Public Domain: FSA: by Unknown (NARA), National Archives.

The economic crisis brought together a variety of factions that previously had not found much cause to work in common. Working under the label of the Democratic Party, the New Deal Coalition included the agrarians who advocated farm credit, farm cooperatives, and the redistribution of farmland to those who worked the land, primarily sharecroppers. The agrarians were the traditional base of the Democratic Party. It also included the social reformers of the Progressive movement, which the Party had lured to its side. The coalition would eventually include labor unions, and religious and ethnic minorities. The coalition also included Texas, as well as many prominent Texans, the most important of whom was Lyndon Baines Johnson. Johnson ran for Congress as a supporter of the New Deal in 1936 and expanded on its principles when he became president.

The severity of the economic crisis created a window of opportunity for an equally severe national response that included, in Roosevelt's first 100 days, temporarily closing the banks, providing emergency relief measures like soup kitchens, stabilizing prices for agriculture, and creating work projects for the unemployed. The New Deal's Tennessee Valley Authority allowed for the expansion of public ownership of a utility, providing the resources to build dams and hydroelectric power plants on the Tennessee River to expand access to electricity, including in rural areas. The Public Works Administration oversaw the construction of large scale infrastructure projects like bridges, dams, and hospitals (Figure 2.4.6). None were traditional responsibilities of the federal government, but state and local government resources had been exhausted.



Figure 2.4.6: During the Great Depression, the WPA employed hundreds of artists to create posters promoting New Deal programs such as those that employed millions in public work projects. SOURCE: Library of Congress.

Many projects were funded by the national government, but run by the state governments. The funding mechanism was the **matching grant**, which provided a significant amount of funds provided that a small amount was matched by the state in order to show that the state was invested in the program. The money was received with the understanding that it would be used for certain specific purposes as defined by the national government. These were called **categorical grants**.

Given the dramatic expansion of federal power made in these laws, successful challenges were made to many of the initial laws passed. The Supreme Court continued to be dominated by justices largely committed to dual federalism, and struck down laws that violated those principles. The national government attempted to justify these laws by arguing they involved interstate commerce, but a majority of justices on the Supreme Court initially disagreed. Two key laws were the National Industry Recovery Act (1933), which allowed the president to stimulate the economy by regulating fair wages and prices, and the Agricultural Adjustment Act (1933), which attempted to stabilize agricultural prices by purchasing surpluses in order to remove them from the market. These programs were challenged in court as unconstitutional and then altered and rewritten in light of court cases in order to be in compliance with the constitution.

The **Social Security Act of 1935** created a variety of programs including unemployment insurance, aid to dependent children, and old age insurance, which is funded by a payroll tax. Before the Social Security Act, one-half of the elderly were estimated to live below the poverty line.[27] Today, around ten percent of the elderly are estimated to be poor due to the benefits provided by Social Security. [28] Upon signing the Social Security Act, Roosevelt described his hopes for what it might accomplish:

> We can never insure one hundred percent of the population against one hundred percent of the hazards and vicissitudes of life, but we have tried to frame a law which will give some measure of protection to the average citizen and to his family against the loss of a job and against poverty-ridden old age.[29]

This would become a model for a program establishing medical insurance for the elderly, also paid for by a payroll tax. The program was funded by both the eventual recipient and was matched by the recipients' employer.

As was the case with the bulk of New Deal legislation, the Social Security Act was immediately challenged in court as having no constitutional authorization. As was not the case with previous legislation, it was found to be constitutionally justified use of the national governments power to tax for the general welfare. In addition to Social Security, FDR signed the National Labor Relations Act of 1935, which granted employees the right to organize labor unions, and the Fair Labor Standards Act of 1938, which established a minimum wage and time and a half overtime pay for employees that work more than forty hours a week.

Roosevelt was succeed in the presidency by his vice-president Harry Truman. Increases, both proposed and real, in national power occurred during the presidency of Harry Truman, and the moderate Republican Dwight Eisenhower who succeeded Truman did nothing to roll back the legislation. Truman's presidency transitioned towards a focus on racial issues, which were not on the agenda of Franklin Roosevelt out of a fear that it would break apart the New Deal Coalition by alienating the South. Truman went forward anyway, which did in fact alienate the South and the South began to slowly turn away from the Democratic Party.

Truman's focus was on civil rights which included the desegregation of the military and proposals for civil rights bills, as authorized in the Fourteenth Amendment. He also revived discussions of expanded access to medical assistance, which would become a significant contribution to the evolution of federalism under President Lyndon Johnson in the mid-1960s when Johnson became president after the assassination of John F. Kennedy.

The Great Society

A native of Texas, Johnson was elected on his own in a landslide in 1964. Having spent decades in Congress, first as a U.S. representative and later as a senator and senate majority leader. He put his legislative skills to work as president to pass additional legislation. Johnson's **Great Society** programs intended to address chronic poverty and conditions that resulted from racial and gender discrimination, and would go further than had any previous programs. Great Society legislation promoted national objectives in states that were sometimes reluctant to support them. For example:

- Civil Rights Act of 1964, which ended segregation and made discrimination on the basis of race, color, sex, or national origin illegal.
- The Economic Opportunity Act of 1964, which created Head Start, the Job Corp, and Upward Bound, to train young people so they could escape poverty.
- Social Security Act of 1965, which created Medicare, basic medical insurance for those sixty-five and older, and Medicaid, medical insurance for the poor.
- Voting Rights Act of 1965, which banned racial discrimination in voting.
- Elementary and Secondary Education Act of 1965, which distributed funds to schools in low-income areas.
- Higher Education Act of 1965, which created grants, loans, and other financial aid to help students acquire a college education. In 1964 fewer than ten percent of those over twenty-five earned a college degree.30 Today, the number is thirty percent.[31]

Coercive Federalism

Many of these policies saw the national government inserting itself into local affairs, and sometimes pursuing objectives that were not supported by majorities at the state and local level. This was especially true in Texas, and it remains true at the state, even though many local governments welcome federal assistance in funding. A principal area of controversy was education, which was already a hot button issue following the decision by the U.S. Supreme Court in *Brown v. Board of Education* (1954) that racial segregation in schools violated the Equal Protection Clause. This was compounded by the Civil Rights Act, which outlawed racial segregation in public accommodations, as well as the Voting Rights Act. While each passed, the opposition to them contributed to a counter-movement against cooperative federalism, which some derided as **coercive federalism**. The backlash was exploited by Richard Nixon, who used race as his so-called southern strategy to win the southern White vote. Senator Strom Thurmond of South Carolina told his constituents, "If Nixon becomes president, he has promised that he won't enforce either the Civil Rights or the Voting Rights Acts. Stick with him."[32] Nixon succeeded Johnson as president but had to resign from office amidst the Watergate Scandal. Georgia Democrat Jimmy Carter was then elected to bring integrity back to the presidency, and Ronald Reagan was elected president in 1980 with a promise to roll back the expansion of national power.

New Federalism

Reagan's stated purpose was to reduce the inefficiencies that exist in federal bureaucracies, in addition to allowing local areas to govern themselves according to their own wishes. What came to be known as **New Federalism** took a few different forms. One was **devolution**, which was the process of returning decision-making regarding policies to the state and local levels. The other was **privatization**, which challenged the idea that government agencies should implement the law. Private organization should be contracted out to do so instead. In Texas this has been done with highway construction, the management of prisons, and on the local level the provision of parking, as well as parking enforcement. A third was **deregulation**, which reduced the role that the national government played in the commercial and manufacturing process.

Reagan had already established himself as an opponent of national power as a spokesperson for the American Medical Association—where he campaigned against Medicare and Medicaid—and governor of California. Previous Republican presidents had selectively limited federal power in creative ways. One of the more commonly used ways of doing so was the **block grant**, which as opposed to the categorical grant placed limits on how federal funds were to be spent, would allow for their use to be broadened. The Community Development Block Grant program is still in operation today. The use of block grants allows for experimentation in the delivery of services, which is argued to be one of the principle benefits of the block grant. Along with

devolution and privatization, it allows states and local governments to be "laboratories of democracy."[33] Policy successes can be copied; policy failures can be avoided.

While Reagan's initial promise was to eliminate many federal programs—efforts that continue today—these were largely unsuccessful. But the effort, and a string of Republican victories in the presidency, largely put a halt to further encroachments on state power by the national government. The only significant exception is law enforcement and public safety. For example, in 1984 the National Minimum Drinking Age Act coerced states into raising their drinking ages to twenty-one by threatening to reduce their highway funding. The Violent Crime Control Act of 1994 also expanded the range of laws punishable by the federal government, enhanced their penalties, and required states to create registries for those determined to be sexual offenders.

The last requirement, among other requirements imposed upon states by the national government led to concerns about **unfunded mandates**, requirements that did not come with financial assistance by the national government. These include mandates regarding civil rights, education, and environmental programs, and have led to sporadic efforts to curtail them in laws such as the Unfunded Mandate Reform Act of 1995.

In the midterm elections of 1994, Republicans were able to flip both chambers of Congress. They controlled the House of Representative for the first time in forty years. This allowed for the goals of New Federalism to be achieved through the legislative process. Republicans ran collectively on a series of proposals they called the Contract with America. Cuts were proposed to child welfare programs and product liability penalties; procedures were designed to make federal budget increases difficult.

In the long run, these proposals did little to reduce the power of the national government. Opponents of cooperative federalism found more success rolling it back through the courts. Beginning in 1980, Republican presidents appointed more justices to the Supreme Court than Democrats. This allowed them to place justices on the court that were less likely than their predecessors to see a constitutional justification for the programs of the New Deal and Great Society. Among other things, they began narrowing the interpretations of the Commerce Clause that facilitated expanded national power. In the *United States v. Lopez* (1995) case, the Gun Free School Zones Act was overturned because the court did not agree with the argument that gun violence had an impact on commerce. Similarly, in 2000 the court did not agree with the argument in *United States v. Morrison* that the Commerce Clause justified the Violence Against Women Act, which allowed victims of assault to sue their attackers in federal court. So, while a state may pass such a law, the national government may not.

In 2013, the Supreme Court decision in *Shelby v. Holder* overturned parts of the Voting Rights Act of 1965. The Voting Rights Act required the federal government to check the implementation of election laws in states with a history of voter discrimination based on race or ethnicity. While the court argued that the federal government still had the ability to pre-clear (i.e., approve) such legislation prior implementation, in *Shelby v. Holder* it also ruled that the criteria used in 1965 to determine which states were subject to pre-clearance—mostly southern states—was no longer relevant. The Brennan Center for Justice noted that, "Within 24 hours of the ruling, Texas announced that it would implement a strict photo ID law."[34]

Though the trend towards state power has not been pervasive, exceptions have been made in certain areas. For example, in the case of *Gonzalez v. Raich* (2005), the court ruled that the federal Controlled Substances Act, which made marijuana illegal within the United States, overruled California's Compassionate Use Act, which attempted to make the use of marijuana for medicinal purposes legal within the state of California. In this case, a majority of the justices ruled that the Commerce Clause authorized federal agents to confiscate marijuana that state law allowed under the argument that an interstate market in marijuana existed, which justified federal intervention in a purely intrastate matter. While the court ruled against California in this particular case, in 2009, the Department of Justice decided not to pursue such cases.[35] Subsequently, seventeen states have legalized marijuana outright despite a prohibition at the federal level. Proponents of New Federalism use this as one of many examples of its benefits. It allows states to act as "laboratories of democracy,"[36] and experiment with different policies, which can then diffuse across the nation if they seem worthwhile.

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2.5: Recent Federalism Cases involving Texas

In the past several decades Texas has been a leader in pushing back against encroachments of the national government. The degree of activity varies depending upon whether the occupant of the White House is a Republican, who is likely to share the state's restrained views on the role of government in the economy, or a Democrat, who is more likely to see an expanded role.

During the Obama Administration, Texas was active in using the federal courts to challenge the constitutionality of laws and executive orders issued. The Texas attorney general Ken Paxton is responsible for making the decision to pursue and organize legal challenges. Greg Abbott held the position until becoming governor after the 2014 election when he was replaced by Ken Paxton. Together they sued the Obama Administration forty-eight times in federal court, and they are allowed to do in the U.S. Constitution.

These include challenges to the Affordable Care Act (referred to as *Obamacare*) and the Clean Power Plan, and opposition to a policy extending spousal benefits to same sex couples. Texas also sued the Obama Administration to support its voter ID laws and redistricting plans. After a period of calm during the Trump presidency, conflict is set to ratchet up with Joseph Biden in the White House. So far attention has been focused on new COVID-19 mandates issued by the Occupational Safety and Health Administration, the reversal of restrictive border policies, and the American Family Plan, part of his two trillion dollar infrastructure plan.

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2.6: Conclusion

The United States Constitution sets in motion the creation of a highly complex federal governing system composed of one national government, fifty state governments, and over 90,000 local governments. Texas's government exists within that context. The state's responsibilities to the national government, as well as to the other forty-nine states, are laid out in it. In addition there is the understanding that as long as the state complies with certain constitutional requirements— such as the requirement to ensure the equal protection of the law to all persons in their jurisdiction and refrain from policies that are best implemented on the national level—they are free to do as they wish.

It is worth noting that Texas has been influential in federalism's evolution. The administrations of both Roosevelt and Reagan contained Texans, and the state had considerable influence in both presidencies. In fact, each was initially elected to office with Texans as running mates. Roosevelt ran John Nance Garner, who was from Uvalde and was the first Texan to hold the office of Speaker of the United States House of Representatives. He helped push New Deal legislation through that institution. Thirty years later, another Texan—Lyndon Johnson, who had initially run for office promoting the New Deal—would use his political skills to expand the New Deal with legislation he dubbed the *Great Society*. Reagan would run in both 1980 and 1984 on a ticket with Connecticut transplant George H.W. Bush who had already established himself as a founder of the modern Republican Party in Texas and a leader of the effort to draw conservative Democrats across the aisle.

As political control of the national government shifts regularly from one faction to another, the relations between the different levels of government, and among the states, is in flux. Conflict is inevitable. The only change is the nature of the conflict at a particular moment in time. The more you understand the basic rules regarding federalism, the more you can understand the nature of whatever conflict is at hand, and how it can be resolved.

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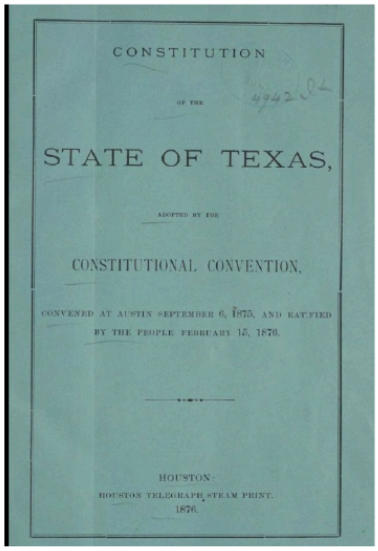
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3: TEXAS CONSTITUTION

After reading this chapter, you should be able to:

- Explain why Texas went through so many constitutions in the nineteenth century.
- Assess the reasons for so many amendments in the Texas Constitution, and the nature of the political forces that drove them.
- Identify where the 1876 has changed and where it has stayed the same.

The area we call Texas has been governed under nine different constitutions, each a reflection of the political circumstances of the time. One of the first was adopted in 1827 when the Mexican provinces of Texas and Coahuila were, under the authority of the 1824 Mexican Constitution, combined to form the state of *Coahuila y Tejas*. The Mexican Constitution itself was drafted and ratified when it achieved independence from Spain which created its first constitution in 1812. New constitutions were adopted as Texas went through further changes. For example, when it became a republic in 1836, and again when it joined the Union in 1845. Texas's involvement in the failed attempt to create a separate nation with other southern states led to a rapid turnover in constitutions—four in fifteen years—culminating in a document that forms the basis of the current constitution, adopted by a Constitutional Convention in 1875 and ratified by Texas voters in 1876 (**Figure 3.1).** As if that wasn't enough, the 1876 Constitution has been constantly amended, leading to substantive changes in parts of it, but retaining others. Further changes are being debated as this chapter is being written, while the Texas Legislature meets in Austin for its Eighty-Seventh Regular Session.


CONSTITUTION

OF THE

STATE OF TEXAS,

ADOPTED BY THE

CONSTITUTIONAL CONVENTION,

CONVENED AT AUSTIN SEPTEMBER 6, 1875, AND RATIFIED BY THE PEOPLE FEBRUARY 15, 1876.

HOUSTON:
HOUSTON TELEGRAPH STEAM PRINT.
1876.

Figure 3.1 The cover for the Texas Constitution of 1876, printed in 1876. SOURCE: Library of Congress, Texas. *Constitution of the State of Texas*. Houston, Houston Telegraph Steam Print, 1876. Pdf.

While this might at first seem highly confusing, you will find after a careful reading of this chapter that these changes make perfect sense. All it takes is an understanding of what constitutions do, and how they embody the goals and aspirations of the people who draft and ratify them (discussed in chapter 2). They are the fundamental rules that establish the governing process, and as power shifts from one group to another, those rules are changed to reflect those shifts. That at least is the story of the constitutions of Texas.

3.1: State Constitutions

3.2: The Constitutions of Texas 1812–1876

3.3: The Texas Constitution Today

3.4: Prospects for Revision

3.5: Conclusion

3.6: Key Terms and Concepts

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3.1: State Constitutions

The structure of the United States Constitution, written in the summer of 1787, was influenced by the thirteen state constitutions written after independence was declared from Britain. The U.S. Constitution then provided a model for all subsequent state constitutions, including Texas. Each of the fifty states has its own constitution, which allows for the organization of the state government according to the beliefs of the people of each state, and all constitutions in the United States are based on the authority of the people—at least those with power—who live within the borders of that governing system. As discussed in chapter 2, Article 4 of the U.S. Constitution guarantees that each state that is a part of the Union has a **republican government**, a representative democracy based on the **consent** of the people to be governed under that bconstitution. While it makes no explicit mention of a constitution for the states, the implication is that the specific republican government each state has will be based on a unique constitution that it writes and ratifies for itself, and the basic outline of each state constitution is roughly based on that of the United States Constitution.

> The Preamble of both the U.S. Constitution and the Texas Constitution established the basis of governing authority. The U.S. Constitution states,
>
> *We, the people* of the United States . . . do ordain and establish this constitution for the United States of America.[1] (emphasis added).

The Texas Constitution echoes:

> Humbly invoking the blessings of Almighty God, *the people* of the State of Texas, do ordain and establish this Constitution.[2] (emphasis added).

It should be noted of course that the phrase *the people* referred to those who were recognized as citizens and granted the right of **suffrage** (the right to vote). This was a small segment of the population initially, men who were wealthy property owners. As the nation expanded westward, however, so did notions that the common man—meaning non-property-owning White men over twenty-one—should be able to participate politically, and limits on suffrage based on wealth and property ownership were removed or not included by most states, as was the case when Texas became a state. But suffrage would be an issue in the constitutions of Texas as people of color became free after the Civil War.

State constitutions have had their impact on the United States Constitution, too, becoming practical ways to experiment with different forms of republican government, in particular the proper ways to enforce the separation of powers in a meaningful way. The importance of restraining legislative power became apparent, especially the need to restrict the legislature from becoming intertwined with the executive. The need for an independent judiciary also became important as well as granting them the power of **judicial review**, which allows the courts to strike down laws and executive actions that violate constitutional limitations. Not only does it help preserve the integrity of the constitution, it allows the judiciary the most effective means of protecting itself from the other two branches. In Texas, the legislative branch is bicameral with a House and Senate, just as it is on the national level. The executive branch, however is distinct. Executive power is shared among several key elected officials, creating what is called a **plural executive** and a notably weak governor in the state. In addition, judges are elected in Texas in partisan election, which is different from the appointment process of the national judiciary branch.

While state constitutions have the same structure as the national constitution, there are also significant differences between the two regarding policies. The greater range of policies handled by the state governments means that the state constitutions tend to be more expansive than the national constitution. This has led Texas to incorporate additional language to make the limits on governing power more explicit. Differences also lie in the subjects of most the remaining Articles. Many concerns subjects that are specific to the states, such as suffrage, education, and the formation of local governments. Others focus on issues unique to Texas, such as its approach to regulating railroads, land ownership, and the management of public lands. And unlike the United States, the territory comprising Texas has gone through a series of constitutions—nine in all—each reflecting the peculiar circumstances of that period, from Spanish law in early Texas to the 1876 constitution that governs today.

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1. U.S. Const. prmble., https://constitutioncenter.org/inter...ution/preamble.
2. Tex. Const. prmble, https://tarlton.law.utexas.edu/const...-1-bill-rights.

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3.2: The Constitutions of Texas 1812–1876

In addition to being a state within the United States, Texas has been governed by the constitutions of Spain as part of New Spain, Mexico as a Mexican state combined with Coahuila, the Republic of Texas as an independent nation when Texas won its independence from Mexico, and the Confederacy as one of the states that attempted to secede from the Union. Texas is the only state to actually spend a significant amount of time both as a state in a foreign nation and an independent republic, and one that had to be admitted to the Union twice. This makes the story that much more interesting as many of the features of these constitutions still exist in some form in the current constitution. These constitutions divide well into three sections, with three constitutions in each.

The first section includes constitutions by the Spanish or Mexican governments for the Texas territory, the Coahuila and Texas state constitution that Texas delegates helped write as part of the United States of Mexico, and the constitutional crisis that led to Texas's Declaration of Independence in 1836.

The second section includes constitutions written by political elites in Texas, first for an independent nation, second for a state within the United States of America, and third for a state within the Confederate States of America.

The final section includes the three constitutions that followed in rapid order after the defeat of the Confederacy. The question was what type of constitutional design would be acceptable to both the national government and the people of the state. Three versions were necessary before one was found acceptable to both.

Spanish Law: The Constitutions of 1812, 1824, and 1827

The Spanish Empire began in 1521 with the fall of Tenochtitlan, which is the historic center of Mexico City today. Spain claimed the bulk of North America among its possessions. In fact, it was only able to govern the part south of what is now called the *Rio Grande*. Its only real incursion northward occurred in response to evidence that France had briefly established a presence in what is now Victoria in East Texas. The need to settle the area that became Texas was in part to provide security. Hostile tribes controlled the plains, primarily the Comanche, and settlement north of the Rio Grande created a protective barrier for the area to the south.

While Spain made exploratory visits to the eastern Atlantic Coast and established a small number of settlements there, the lack of ready mineral resources—such as the significant amount of gold and silver available in Mexico and South America—made the endeavor pointless. As the United States began surveying extensively, and making sophisticated maps, it became easier to determine which nation controlled which land. Some disputes still existed. For example, when Thomas Jefferson authorized the purchase of the Louisiana Territory from France—territory that they had just acquired from Spain—he was under the impression that the land extended to the Rocky Mountains and would have included Texas. The signing of the Adams–Oniz Treaty in 1819 set the Sabine River as the eastern border of the Spanish Territory, and Spain ceded Florida to the United States in return.

What follows is a series of events that lured American settlers, rapidly marching westward with little interest in the legality of settlement, to Texas. Other events involved disputes between Spain and Mexico, leading to rebellion and the establishment of the nation of Mexico. Still others were complicated by questions regarding the type of constitutional system that would govern an independent Mexico and the type of relationship that would exist between its central government and its states. In each case, the number of Anglo American settlers increased and as their population grew they began chafing under a constitutional and governing system they were unable to influence.

The 1812 Political Constitution of the Spanish Monarchy Prior to the Spanish Constitution of 1812, all of New Spain, including the missions and local settlements north of the Rio Grande, operated loosely under the Catholic Church, the military, and Castilian (Spanish) law. Aspects of Castilian law were retained by Texas in later constitutions. These included simple civil trial procedures, common ownership of marital property between husband and wife, and homestead protections. Many of these remain in Article 16 of the current version of the Texas Constitution:. Section 49 provides homestead protection:

> The Legislature shall have power, and it shall be its duty, to protect by law from forced sale a certain portion of the personal property of all heads of families, and also of unmarried adults, male and female.[3]

Section 52 goes on to stipulate common ownership:

> On the death of the husband or wife, or both, the homestead shall . . . not be partitioned among the heirs of the deceased during the lifetime of the surviving husband or wife, or so long as the survivor may elect to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased may be permitted, under the order of the proper court having the jurisdiction, to use and occupy the same.[4]

Constitutional rule came to the area that would become Texas in 1812 during the Napoleonic Wars when Napoleon deposed the Spanish King Ferdinand VII and established a constitutional monarchy with a legislature and his brother Joseph on the Spanish throne. This marks the switch from the absolute monarchy that had existed before. The key feature of the constitution was that limits were placed on the power of the king, certain rights established for the people, and a representative system—a republic—created. Many components are familiar, including separated powers, a legislature, freedom of the press, and a complex indirect electoral system. Others would not be, including Catholicism as the official religion and universal adult male suffrage. When Ferdinand VII regained power in 1814, he dissolved the constitution, the legislature, and the very idea of representative democracy, but he was forced to reconsider in 1820 and reinstate the constitutional monarchy to avert a military coup.

With Spain in turmoil in Europe, a war for independence broke out in Spanish Mexico. It would last from 1810 to 1821. Royalist forces supporting Spain battled republican forces supporting an independent Mexico and the elimination of a monarchy. Spain had initially

restricted settlement in the *Tejas* region to Spanish citizens, but few were interested. So Spain granted a land speculator named Moses Austin land grants for immigrants—most of them Anglo Americans from the southern United States. Land speculation and emigration were lucrative endeavors at the time.

Why did people come to Texas? Like much of the land west of the Mississippi River, Texas was fertile, open territory. Davy Crockett, an early transplant from Tennessee, would call Texas, "the garden spot of the world."[5] Others were less kind in remarking on "floods, mosquitos, and violent encounters with Indians."[6] Many saw economic opportunity in developing commercial centers, which provided the basis for the cities which now dominate the state. Recent research has thrown a curve at our understanding of how cities like Houston were actually founded. It has been long held that the city was founded by the Allen Brothers, John and Augustus. Recently it has been maintained that Augustus's wife Charlotte was the impetus behind the project.[7] Her father was a developer from upstate New York, who gave Charlotte the money that may have purchased the land. As women could not sign contracts. Her plans had to be legalized by her husband's signature.[8] As an incentive for immigration, once people settled in Texas, U.S. debts could not be collected. Moses's daughter Emily Austin Byran warned her brother Stephen about creditors outside of Texas in a letter, "I am fearfull that if you got to N. Orleans, you will meat [sic] with some unpleasant things. I have reference to one or two Notes of yours that are in the hands of some ill-natured persons, and I have been inform'd that one of them has been forward'd to New Orleans for collection."[9] So, Anglo American settlers arrived looking for cheap land and a fresh start. Those who came to Texas also understood they would have to comply with the requirements of the Spanish Constitution, including an acceptance of a state religion—Catholicism—and limits on enslavement. Enforcement of these requirements was lax, however. Spain, and later Mexico, needed the settlers to help develop resources, increase agriculture and commerce, and provide a buffer against the Plains Indians. Moses Austin's death, coupled with the end of Spanish rule and the creation of a new constitutional order, would delay the arrival of the new settlers. Even without the land grants, approximately 2,500 Anglo American settlers were in the province, many illegally.

The 1824 Mexican Constitution Mexico won its independence from Spain in 1821, but the early years of Mexican independence were chaotic, and the government in Mexico City moved from monarchy to republic to dictatorship, with numerous coups in between. From 1821 to 1823, Mexico—including Texas—was a constitutional monarchy under Augustin de Iturbide, Emperor of Mexico, who designed the white, green, and red of the Mexican flag to represent "religion, independence, and unity," more specifically the dominance of the Catholic Church (white), the political independence of Mexico (green), and the social equality of all inhabitants of Mexico with no distinction made between Europeans, Africans, Asians, or Indians (red).[10]

State governments in Mexico grew in strength at this time and began electing their own legislatures. Slowly a federal republic emerged. When the states and provinces sent delegates to write the 1824 Constitution they did so with instructions by their respective legislatures to create a federal republic, with sovereignty based in the states. Juan Jose Maria Erasmo Sequin represented Texas in the assembly, which established nineteen states, as well as four territories, and allowed the states to create their own constitutions (**Map 3.1**). At least at the beginning, power was vested primarily in the legislature, and the states had a degree of autonomy.



Map 3.1 Map of the United States of Mexico, 1828. SOURCE: Texas General Land Office

Mexico opened its borders to immigration under the General Colonization Law that enabled all heads of household regardless of race, religion, or immigrant status to acquire land in Mexico. Between 1824 and 1828, Moses Austin's grant—taken over by his son Stephen and reauthorized under Mexico—had almost 300 land titles between the Brazos and Colorado Rivers. The settlers he selected were educated and propertied, and fourteen were slave owners, bringing with them the institution of **slavery** to Texas. Many were Protestants, who did not wish to convert to Catholicism and who were committed to personal liberty and private property (property in the sense of the early settlers included people who were enslaved). These were the core of those who would seek to govern themselves under their own constitution. But before that occurred, they spent time being governed under the 1827 Constitution of *Coahuila y Tejas*.

The 1827 Coahuila y Tejas Constitution The 1824 Mexican Constitution—as originally written—emphasized the importance and autonomy of state governments and established the state of *Coahuila y Tejas*. Each state was allowed to then craft its own constitutions. As a border state, it had a military under a single commandant general. The state was also divided into departments, and the departments were subdivided into municipalities, which contained mayors and city councils. Coahuila was among the poorest provinces in Mexico, and like Texas, sparsely populated.

All of Texas was originally only in the Department of Bexar, and then further subdivided into Bexar, Brazos, and Nacogdoches. While this gave them three representatives, the majority were from Coahuila, and the capital—Saltillo—was there as well. This meant that the Anglo Texans were a minority within the state and had to travel a long distance for government business. Anglo American immigrants, especially those who arrived in the years following the drafting of the Constitution of 1824, also resented that all political matters were handled in Spanish. The abolition of slavery in 1829 by Mexican president Vicente Guerrero—of mixed Indian and African descent—would have been a clear shot at Anglo immigrants in Texas, but Stephen F. Austin was able to procure an exemption for slavery in Mexican Texas at the time.

Over the course of the next twelve years, the nature of the Mexican government would change. Forces existed that continued to support a centralized monarchy, mostly the elites, while others wanted a federal republican system similar to that in the United States. The growing Anglo population led to passage of the Law of April 6, 1830, which placed limits on Anglo immigration—partially leading to the complaints contained in the Texas Declaration of Independence written in 1836. This, coupled with recently elected President Antonio Lopez de Santa Anna's efforts in 1835 to reduce the powers of the states, led to a constitutional crisis, a war for independence, and a new constitution as an independent nation

Constitutional Crisis The upheavals in Mexico led the Texans to call Conventions in both 1832 and 1833 to discuss options. A decision was made to officially request that Texas be allowed to be an independent state within Mexico. In 1833 they drafted a constitution to be proposed to the Mexican government. *Tejanos*—Spanish, Mexican, and indigenous descendants in Texas—opposed the Conventions, as well as the resulting document.

The key goal of the new constitution was to separate from Coahuila. The document was relatively short; its content a reflection of the values and traditions of the Anglo Americans from the South who had been recruited to the state. Many of its features reappear in most, and in some cases all, of the constitutions to come. These included the due process rights common in the American states (for example, protection against unlawful search and seizure and the right to be tried by a jury of your peers),

the separation of powers backed up with checks and balances, and a wide variety of elected positions with short terms and term limits. All of these are meaningful ways of limiting government powers. Other parts that would be retained in the future included the provision of a free public education.

One components of the document proved ominous. Article 2 in the section on General Provisions claims the right of rebellion:

Government being instituted for the protection and common benefit of all persons, the slavish doctrine of non-resistance against arbitrary power and oppression is discarded, as destructive of the happiness of mankind, and as insulting to the rights, and subversive of the liberties of any people.[11]

Stephen F. Austin was selected to deliver the constitution to the Mexican government in Mexico City, but upon arrival was "incarcerated in a dungeon, for a long time [February 22 until December 1834] , one of our citizens, for no other cause but a zealous endeavor to procure the acceptance of our constitution, and the establishment of a state government."[12] This was an indication that the right to petition for grievances, as well as habeas corpus (which protects against unlawful detention), was not acknowledged and Austin's imprisonment became a key grievance in the Declaration of Independence in 1826.

In 1835, President Santa Anna, on his own authority, revoked the 1824 Constitution to grant himself additional power. Santa Anna dismantled state legislatures to make the states fully subject to national power. This was the final impetus to independence, not just in Texas but in the Mexican states of Yucatan, Tabasco, and the Republic of the Rio Grande (Nuevo Leon, Tamaulipas, Coahuila), among others. Each declared sovereignty and initiated their own independence movements (**Map 3.2**).



Map 3.2 A map of Mexico, 1835–1846. The red areas show regions where separatist movements were active.

Texas then passed a Declaration of Independence on November 11, 1835, to take arms up against Mexico, create a provisional government, and produce, in the midst of the Texas Revolutionary War, not only another constitution but also a Declaration of Independence stating the reasons for independence.

The Texas Declaration of Independence of 1836 As with the Declaration of Independence of the United States, the Texas Declaration of Independence of 1836 justifies their decision to rebel. Its authors—the same group of people who would also write the 1836 Constitution of the nation of Texas—argued that Mexico had violated basic governing responsibilities, in addition to violating promises made to the Anglo Americans who were "invited and induced" to migrate to Coahuila and Texas.[13]

The central complaint made by the Anglo Texans was that Mexico was no longer a federal republic composed of states. It was in the process of being transformed into a centralized unitary system (discussed in chapter 2) under the control of Santa Anna and backed by the "combined despotism of the sword and the priesthood."[14] In a unitary system the president appoints all other top executive officials. Other complaints included:

- the refusal to consider Texas's request to be made an independent state within Mexico;
- the "incarceration in a dungeon, for a long time"[15] of Stephen F. Austin who delivered the request;

- the lack of trials by jury;
- the failure to establish “any public system of education . . . although it is an axiom in political science that unless a people are educated and enlightened, it is idle to expect the continuance of civil liberty, or the capacity for self-government”[16];
- the need to travel a long distance to Saltillo, which was the capitol of the state of Coahuila and Texas, for representation;
- the need to learn Spanish in order to participate in the legislative process.

Being a minority in the state also meant that they were unable to pass laws that secured their interests. Additional issues included the right to possess guns, the preservation of worshipping according to their own conscience, and a refusal to provide security against native tribes. These would form the nucleus of the rights and procedures, based on what they were accustomed to in the United States, in subsequent constitutions.

Independence and Statehood: The Constitutions of 1836, 1845, and 1861

The principle constitutional question during this period was whether Texas would be governed under a national constitution for the Republic of Texas or a state constitution under either the United States of America or the Confederate States of America. Three wars would help answer those questions. The Texas War of Independence in 1836, which created the nation of Texas, the 1845 Mexican-American War, which led the Mexico’s recognition of Texas, and the Civil War. The transitions that accompanies each war led to changes in the state’s constitution, but the principle change during this period was that the constitutions would be written by Texans, primarily Anglo Americans influenced by the frontier values of westward expansion and the southern values of an economy based on the labor of enslaved people of color.

Suspicious of centralized power, the framers preferred that power be as localized as possible, and even then, tight controls were imposed on office holders. This was best expressed in making as many government positions elective as possible, splitting governing institutions into multiple offices, making terms as short as possible, placing limits on how many terms could be served, and setting salaries and other benefits low. In addition, central services such as education and law enforcement were to be implemented locally, and overall limits placed on how much revenue (taxes) could be collected by the government, as well as the potential size of state budgets. Efforts were also made to use the legal system to rollback expansions of national power by arguing they are violations of the United States Constitution and the right of states to govern themselves. Texas was heavily influenced by such principles as these that emerged in the nineteenth century under the banner of **Jacksonian democracy**, so named for President Andrew Jackson who formed the Democratic Party in 1828 and advocated for common Americans to have more influence on political institutions and especially for the expansion of suffrage to all White men, not just the elite who owned property.

In addition, the philosophical perspective of the framers was based on the practical realities of **frontier justice**. The size and emptiness of the state—and the presence of tribes such as the Comanche—made the implementation of the law, and the administration of justice, difficult and costly. Individuals took matters into their own hands, and a legal system allowed for it. The original 1876 Constitution would codify this into language in Section 4 of Article 16: (General Provisions) prohibiting those who had participated in duels from voting or holding office, and in Section 20 of the Bill of Rights, prohibiting the practice of “outlawry,” stating “no citizen shall be outlawed.”[17] This removed certain people from being protected by law, meaning effectively that anyone could punish them. Ongoing examples include the explicit allowance of keeping and bearing arms for the purpose of self-defense.

The authors of the 1836 Constitution, and all subsequent ones as well, were familiar with the structure of the United States Constitution and mimicked it. The structure is different from that of the Spanish and Mexican Constitutions. The structure begins with a Preamble followed by a Bill of Rights, which lays out basic liberties and political rights, much of which is similar— often word for word—with those in the national document. All Texas constitutions also include a statement regarding the separated powers, and declaring that each institution is limited to its specific functions and is not to interfere with those of the others unless stipulated in the constitution. This is followed with three separate sections detailing the design of the institutions vested with the three separated powers: the legislative, executive, and judicial. The 1836 Constitution contains a large section titled General Provisions, which includes items that would later become separate sections in subsequent constitutions: suffrage, education, taxation, counties, and others (**Table 3.1**).

1836	1845	1861
Preamble	Preamble	Preamble
Article 1 - Powers	Article 1 - Bill of Rights	Article 1 - Bill of Rights

Article 2 - Legislative	Article 2 - Powers	Article 2 - Powers
Article 3 - Executive	Article 3 - Legislative	Article 3 - Legislative
Article 4 - judicial	Article 4 - Executive	Article 4 - Executive
Article 5 - Oaths	Article 5 - Judicial	Article 5 - Judicial
Article 6 - President & VP	Article 6 - Militia	Article 6 - Militia
Schedule	Article 7 - General	Article 7 - General
General Provisions	Provisions	Provisions
Declaration of Rights	Article 8 - Slaves	Article 8 - Slaves
	Article 9 - Impeachment	Article 9 - Impeachment
	Article 10 - Education	Article 10 - Education
	Article 11 - Head-Rights	Article 11 - Head-Rights
	Article 12 - Land Office	Article 12 - Land Office
	Article 13 - Schedule	Article 13 - Schedule

Table 3.1 Outlines of Texas Constitutions, 1836-1861

The 1836 Constitution The Convention of 1836 wrote both the 1836 Constitution and the Texas Declaration of Independence in early March while the Battle of the Alamo was raging in San Antonio, and one month prior to the defeat of Santa Anna's forces in San Jacinto. It was attended by elected delegates who tended to be young recent arrivals to the state supportive of independence. Large sections of the document were lifted from the United States Constitution. The opening Articles outline the separated powers, and the basic design of each governing institution. In many ways, this remains the basic design of these institutions in all subsequent constitutions. The terms were short—one year for the House, three years for the Senate, three years for the president, and four years for judges. The executive branch of the1836 Constitution is different from the current design in two ways: (1) it is unitary—meaning that the president appoints all other top executive officials, and (2) presidents are not eligible for re-election, though they can run again after sitting out one term. In addition, the 1836 Constitution adopted "the common law of England," for criminal cases, which included trial by a jury of peers, though Spanish law remained in effect where it was practical, or, as stated in the 1836 Constitution, the common law will be introduced "with such modifications as our circumstances, in their judgment, may require."[18] The **common law** of England is the body of law that traces its roots to judges and the customs of the people in the history of England.

Under Mexican rule, Texas was unable to limit citizenship, nor was it able to ensure that slavery would be protected since Mexican law did not allow it. Both were addressed in the General Provisions of the Texas Constitution. Section 6 limits citizenship to "free white persons" that have resided in the state at least six month, made an oath that they intended to live in Texas permanently, swore support to the Constitution, and swore allegiance to the Republic of Texas.[20] Section 9 stated that "persons of color" who were already enslaved were to remain so.[21] Emigrants to the state were permitted to bring enslaved people with them, and "no free person of African descent, either whole or in part"[22] was able to live permanently in the state, unless otherwise authorized by the Congress. Section 10 held that those who resided in Texas prior to the day the Declaration of Independence was signed, were to be considered citizens—except for "Africans, the descendants of Africans, and Indians."[23] The right of citizenship carried with it entitlement to land. Head-Rights (land-ownership) and the Land Office are separate Articles in subsequent constitutions.

The document concludes with a Declaration of Rights, which contained seventeen provisions that form the basis of the Texas Bill of Rights contained in future constitutions.

The 1845 Constitution The years following nationhood were as tumultuous as those preceding it. Security continued to be a major problem. Mexico did not recognize the independence of Texas following 1836. Hostilities along the border, including a temporary seizure of San Antonio in March 1842 by the Mexican Army, flared occasionally and were reminders that Mexico intended to seize Texas for itself when possible. Settlers who had hoped for an early commitment of support from the United States were disappointed due to U.S. reservations regarding how doing so would impact relations with Mexico. In addition, opposition to Texas's statehood continued out of an unwillingness to add another slave state to the Union. Some have suggested that the debate regarding whether new territories and/or states would be free or slave exacerbated the march towards civil war.

Calls for continued westward expansion drowned out these concerns, however. James Polk won the presidency in 1844 on a platform that included annexing Texas. Polk's victory led to a resolution being quickly introduced in Congress stating their acceptance of the new state "with a republican government adopted by the people of said republic."[24] A joint resolution of the United States Congress extended an annexation offer to the state. This led to a Convention during the summer of 1845 to consider both the proposal and to write the Constitution of 1845 for the state of Texas. The Convention overwhelmingly accepted the offer of statehood, fifty five to one (**Figure 3.2**).

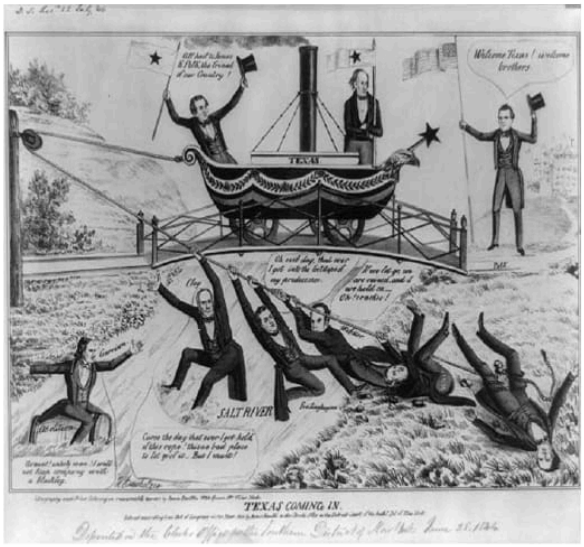


Figure 3.2 "Texas Statehood: Texas Coming In," political cartoon, 1844. James K. Polk, the pro- annexation candidate, standing at right near a bridge spanning "Salt River." He holds an American flag and hails Texans Stephen Austin (left) and Samuel Houston aboard a wheeled steamboat-like vessel "Texas." Austin, waving the flag of the Lone Star Republic, cries, "All hail to James K. Polk, the frined [sic] of our Country!" The Texas boat has an eagle figurehead and a star on its prow. Below the bridge pandemonium reigns among the foes of annexation, led by presidential nominee Henry Clay. The foes are (left to right) Theodore Frelinghuysen, Daniel Webster, Henry A. Wise, and an unidentified figure whose legs are tangled in the rope. Clay: "Curse the day that ever I got hold of this rope! this is a bad place to let go of it--But I must!" Frelinghuysen: "Oh evil day, that ever I got into the footsteps of my predecessor." Webster: "If we let go, we are ruined, and if we hold on--Oh! crackee!" Abolitionist William Lloyd Garrison, straddling a barrel labeled "Abolition" in the river, shouts at Clay, "Avaunt! unholy man! I will not keep company with a blackleg!" referring to the candidate's reputation as a gambler. SOURCE: Library of Congress,

As with the 1836 Convention, the bulk of participants were from southern states. Both annexation and the new constitution were accepted by Texas voters on October 13, setting the stage for both to take effect December 19, 1845. It was significant that both were done at the same time. Law established under the Northwest Ordinance of 1787 created a system where acceptance into the U.S. allowed the U.S. to take ownership of the land. If Texas had been a federal territory when it was annexed, it would have lost ownership of its public lands. By entering as a state, it retained possession of them and all the revenue likely to be drawn from their use. Texas was also allowed to split into up to five states if Texas voters approved; something that did not happen.

The new constitution was modified since it was a state rather than a national constitution, removing language related to the needs of a nation—such as citizenship requirements and laws related to international relations. It expanded the General Provisions of the 1836 Constitution into separate Articles on the militia, enslaved people, impeachment, education, head-rights, and the land office.

Article 3 on the Legislative Department begins with two section (Section 2 and 29) clarifying who was qualified to vote in the state. In each case it was made clear that "Africans, the descendants of Africans, and Indians" were ineligible.[25] Section 29 of the Article also authorizes a census—which determined the outlines of House and Senate districts.

The design of the legislature mirrored that of the current legislature, bicameral with two and four year overlapping terms for the House and Senate, respectively. The House could not consist of less than forty-five, or more than ninety, members. The Senate could not be less than nineteen, or more than thirty-three, members. They were to be paid three dollars a day when in session, and three dollars for every twenty-five miles they travelled to the capital.

In 1845, the state began to experiment with the plural executive mentioned earlier in the chapter. The Texas executive branch is unlike the national system (where the executive power rests with the president). Instead power is shared, and in 1845 the power

was shared between the governor and lieutenant governor—each elected separately for two year terms. They could not serve more than four out of any six years. The legislature was responsible for selecting the state treasurer and comptroller of public accounts, each served two year terms. The design of the judiciary was very simple created with language borrowed from the U.S. Constitution. It created a Supreme Court, and inferior court as created by the legislature. Judges were nominated by the governor with the consent of the Senate for six years terms, which gave the judiciary independence from the voters.

Article 6 concerned the militia—which is not the subject of any Article of the current constitution. It is brief and contains only four sections. A militia could be created, the governor could call it forth, people were allowed to opt out of service—invoking *conscientious scruples*— though they had to pay. Licensed ministers did not have to serve and could not be required to work on roads or serve on juries.

Article 8 covered slavery. This was the first time slavery was directly addressed in the constitution. It contained three sections. The first forbad the legislature from emancipating those who were enslaved without the consent of their owners and without paying their owners for the loss of property. It also mandated that slaves be treated humanely. The second guaranteed an impartial jury for enslaved people tried for crimes "of a higher grade than petit larceny."26 And the third stated that certain crimes against enslaved persons were to be punished as they would be against a White victim, "except in case of insurrection by such slave."[27]

Articles 10, 11, and 12 dealt with education, land ownership, and the management of public lands**.** Free schools were to be established and a perpetual fund was to be created, with revenue collected from the use of public land. A process was created for determining who owned specific parcels of land. Head-rights, and later land titles, would be a subject in successive constitutions until they were judged to be unnecessary in 1969 with outstanding land claims settled by then.

Ultimately, the annexation of Texas did lead to war with Mexico, but American victory in the Mexican–American War (1846-1848) established the Rio Grande as Texas's southern border in the Treaty of Guadalupe Hidalgo. The U.S. also gained all of what had been northern Mexico with land to the west that makes up the states of New Mexico, Arizona, Utah, Colorado, California and Wyoming today.

The 1861 Constitution When the Supreme Court ruled that the national government—Congress specifically—lacked the authority under the U.S. Constitution to regulate slavery, fears that slavery was now a national institution gave rise to the abolition movement. The election of Abraham Lincoln on an anti-slavery platform intensified fear in the slave states that the new Republican majority would end slavery. Voices emerged claiming that Texas should shift allegiance from the United States of America to a proposed Confederate States of America. The movement towards secession in Texas was delayed because of constitutional rules. A Convention could only be called by the legislature, but the legislature was not in session. Only the governor could call a special session, and Governor Sam Houston was opposed to secession, so refused to call a Convention hoping the drive to secession would wane. It did not. A Convention was eventually called, and delegates to the Convention were selected in public meeting by a voice vote to discourage Unionists from attending. The strongly pro-secession Convention produced A Declaration of the Causes which Impel the State of Texas to Secede from the Federal Union. The principle complaint in the document was the threat posed to the institution of slavery, after being promised the ability to maintain it as a condition of entering the Union.

A committee on public safety was established and authorized to seize all federal property in Texas. Texas sent seven members to Alabama to create the Confederate States of America. All current officers were made to swear loyalty oaths to the Confederacy. Governor Sam Houston refused to take the oath and claimed the actions were illegal. The governorship was then vacated by Convention delegates and Sam Houston was replaced with Lieutenant Governor Edward Clark, whose constitutional role it was to fill the vacancy.

The 1861 Constitution is substantively the same as that of 1845. The major change was the change from an affiliation with the United States of American to the Confederate States of America and the strengthening of laws that protected the institution of slavery. No major Articles were added or deleted. The individual property rights of the slave-owner was prioritized. No law could be passed about emancipation. Individuals could not free their own slaves. Immigration of slaves from other states could not be limited. Enslaved people continued to have the right to jury trials, punished as they would be against a White victim, "except in case of insurrection by such slave."[28] But to this was added: "or rape on a white female."[29] The nature of the changes make clear that the principle concern of the members of the secession Convention was to ensure the preservation of slavery.

Then came the rebellion. The question about the legality of slavery, and the right of secession, was answered by the Civil War. The unsuccessful end of the war for the Confederacy meant that Texas would remain—and would always be—a state within the United States of America.

Reconstruction: The Constitutions of 1866, 1869, and 1876

The failed attempt to break with the United States led to a rapid turnover of constitutions in a ten year period. All rebel states were briefly controlled by the national government until each developed a constitution that would be satisfactory to the national government. For most southern states, this took a few tries. Texas's first two attempts failed. It wasn't until 1876 that Texas produced a document that was acceptable to both the national government and the state's electorate.

A dominant theme in all three documents was allegiance to the United States and—in the latter two—acceptance of the Thirteenth Amendment (the abolition of slavery), Fourteenth Amendment (the grant of citizenship and equality before the law—equal rights—to freedmen and women), and the Fifteenth Amendment (the extension of the right to vote to Black men) (**Figure 3.3**).

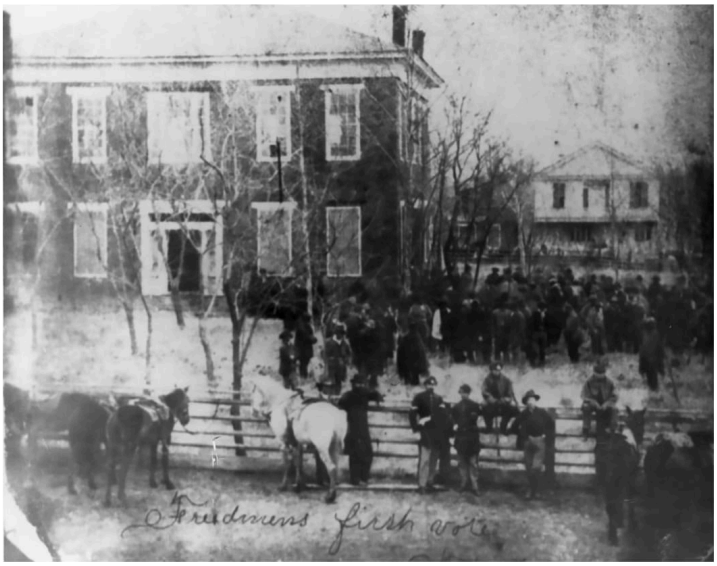


Figure 3.3 Freedmen's First Vote, 1866.

Similarities in structure, including limits on the power of the governing institutions, remain (**Table 3.2**). The major changes include the removal of the Article on Slavery, which temporarily becomes a section on Freedmen, and the Article on the Militia. In addition, Articles were created on Suffrage, and—in the 1876 version—a series of Articles noting the increase in urban areas and the need to provide services through local governments, as well as a desire to regulate the increasingly powerful business interests, particularly railroads, in the state.

Table 3.2 Outlines of Texas Constitutions, 1866-1876

1866	1869	1876
Preamble	Preamble	Preamble
Article 1 - Bill of Rights	Article 1 - Bill of Rights	Article 1 - Bill of Rights
Article 2 - Powers	Article 2 - Powers	Article 2 - Powers
Article 3 - Legislative	Article 3 - Legislative	Article 3 - Legislative
Article 4 - Executive	Article 4 - Executive	Article 4 - Executive
Article 5 - Judicial	Article 5 - Judicial	Article 5 - Judicial
Article 6 - Militia	Article 6 - Right of Suffrage	Article 6 - Suffrage
Article 7 - General	Article 7 - Militia	Article 7 - Education
Provisions	Article 8 - Impeachment	Article 8 - Taxation
Article 8 - Freedmen	Article 9 - Public Schools	Article 9 - Counties
Article 9 - Impeachment	Article 10 - Land Office	Article 10 - Railroads

Article 10 - Education	Article 11 - Immigration	Article 11 - Municipal Corp
Article 11 - Head-Rights	Article 12 - General	Article 12 - Private Corp
Article 12 - Land Office	Provisions	Article 13 - Spanish and Mexican Land Titles
Article 13 - Proclamation	Declaration	Article 14 - Public Lands
	Election Declaration	Article 15 - Impeachment
		Article 16 - General
		Provisions
		Article 17 - Amending the Constitution

A key difference between the three constitutions that follow, as with all the previous documents, resulted from which groups were involved in—and restricted from—calling and participating in the respective Constitutional Conventions In addition to disputes over the status of those who had been enslaved and were now free, conflicts emerged over the power of state institutions and whether education and law enforcement was to be a state or a local function**.**

The 1866 Constitution News of the end of the Civil War reached Texas in May of 1865. On June 17, U.S. President Andrew Johnson appointed Andrew Jackson Hamilton provisional governor of Texas, and federal troops arrived to begin occupation of the state on June 19, which began a period known as **Reconstruction**. This event has been commemorated as Juneteenth, the day news of the Emancipation Proclamation reached Texas. Hamilton had been an elected official in Texas, but his support for the Union led him to flee North during the war. He had already been appointed U.S. Military Governor of Texas during the war, but the position could not be filled due to the war.

On November 15, 1865, Hamilton called for an election to be held the following January 6 to elect delegates for a Convention to meet in Austin starting February 7. Former secessionists were largely excluded from the Convention, though many were able to vote for delegates. After three days delegates agreed to take oaths (called the *Ironclad Oath*) to the U.S. Constitution and were then told what was to be expected of them by the U.S. government in order to be readmitted to the Union: the right of secession must be denied; the social and political status of the freedmen must be addressed fairly, which included granting them the right to sue, engage in contracts, use of courts, testify; and the Confederate debt must be repudiated.

The Convention voted on the proposed constitution on March 27, 1866. Among its key features was an increase in the powers of the governor, including a four year term, higher pay, and the ability to veto specific items from the budget. The salaries of legislators also increased. Many other aspects stayed the same. But the constitution did not incorporate a sufficient content regarding race to be accepted by the national government. The 1866 Constitution did not provide for Black male suffrage or the right for freedmen to hold office. Neither did it ratify the Thirteenth Amendment, instead simply acknowledged that it was now part of the U.S. Constitution. A census based only on the number of White people would continue to be held.

The 1866 Texas Legislature also passed the Act to Define and Declare the Rights of Persons lately known as Slaves, and Free Persons of Color. These **Black Codes** attempted to keep recently emancipated Black people in inferior positions politically, economically, and socially. Black people could not vote or hold office, serve on juries, or testify against Whites. Interracial marriage was made illegal. Labor laws maintained as much as possible the relationships that existed under slavery. Sharecropping, a system where families rent small portions of land with the promise that they will share a portion of their crops with the landowner, tied people legally to the land in order to ensure that they did not become economically independent. Agreements for apprenticeship or labor could be enforced with violence, and Black farmers who strayed from their land could lose all rights to the proceeds of their labor.

The 1866 Constitution was invalidated after the election of 1866 by the so called **Radical Republicans** who had increased their power in the United States Congress. Radical Republicans had a more punitive attitude towards the southern states. In 1867, Congress passed a series of Reconstruction Acts. These Acts divided the South into military districts with Texas placed in the fifth district with Louisiana. They made full readmission—which included the right of representation in Congress—dependent upon ratifying the Thirteenth and Fourteenth Amendments and establishing universal suffrage for adult Black men, as well as rudimentary civil rights for freedmen and women. The state was also required to hold another to Convention to write an appropriate constitution and to impose voter registration. The U.S. Army not only kept the peace but determined acceptable office holders.

The commander of the Fifth Military District—Philip Henry Sheridan—called an election for early February 1868 to determine whether a Convention should be held, and if so, who would be the delegates to the Convention. Black voters were eligible to vote,

and overwhelmingly voted to support the calling of the Convention. The legitimacy of the vote was made suspect by the large number of people who failed to vote, including a sizable number of Whites. Ten of the ninety delegates were Black, and only six had been members of the 1866 Convention. Deep divisions within the various factions made the Convention unproductive and resulted in an incomplete product.

The 1869 Constitution This is the most unusual of the Texas constitutions as it was influenced heavily by the national forces that were in control of the state at the time. These forces were driven in part by the insufficiency, from the point of view of the national government, of the 1866 Constitution. Especially problematic was the unacceptable exclusion of African Americans from the rights of citizenship. The 1869 document contained more forceful language against secession, greater protections for freedmen, and limits on local power, as localities were believed to be the source of racial hostility.

While unpopular with Whites in the state, the constitution was sufficient to readmit Texas to the Union and allow Texas voters to participate in the 1872 presidential election. The document contained language and institutions very different from that found in other constitutions. The Bill of Rights, for example, began by addressing "the heresies of nullification and secession,"[30] and declaring the supremacy of the U.S. Constitution:

> The Constitution of the United States, and the laws and treaties made, and to be made, in pursuance thereof, are acknowledged to be the supreme law; that this Constitution is framed in harmony with, and in subordination thereto; and that the fundamental principles embodied herein can only be changed, subject to the national authority.[31]

Just as significant was the centralization of powers in the state government—particularly in education and law enforcement. Centralization increased the executive authority, as did the expansion of the governor's appointment powers. Equality before the law and universal suffrage for adult men, Black and White, was established. School attendance, for both Black and White children, was made compulsory.

Many of the provisions for former freedmen and women proved unpopular with ex-Confederates, who had not participated in the formation of this constitution. In addition to the ever present drive to limit Black equality, education, and suffrage, opposition emerged to the taxes required to support statewide law enforcement and education. Proponents of local government pushed back against effort to limit their ability to govern themselves as they chose. Their efforts to oppose these measures would be aided by the end of Reconstruction, and the removal of the federal troops necessary to implement the measures contained in the 1869 Constitution.

The 1876 Constitution Pro-Union southerners—most notably E.J. Davis who served as governor from 1870 to 1874—dominated Texas government under the 1869 Constitution, but after Reconstruction, ex-Confederates were resurgent and began to check the state power used to enforce civil rights for African Americans. The creation of the Texas State Police was especially controversial since it included Black police officers and was granted extra powers to address racially based crimes. These were tough to enforce in small local areas, so officers were granted the power to move defendants across county lines, which is unconstitutional. The creation of the police was also constitutionally suspect since in the Texas Senate senators opposed to the creation of the police were arrested.

Opposition to Davis's actions, and the promotion of civil rights in general, benefitted the Democratic Party. They worked to weaken, then to replace, the 1869 Constitution, and were able to regain control of the legislative and executive branches of Texas government following the election of 1874 (**Figure 3.4)**.

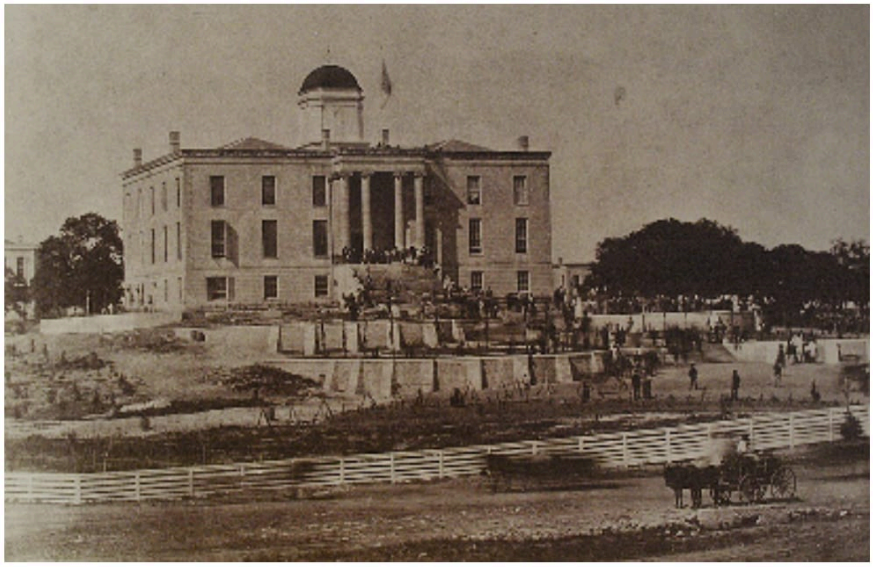


Figure 3.4 Standoff after the 1873 election.

A Constitutional Convention was called in 1875 with most of the delegates Anglo Democrats. Only fifteen Republicans and six African Americans participated. The dominant political force in the Convention was the **Grange—**a coalition that promoted the interests of farmers in the mid-1870s. Its members were elected to almost half the delegate positions available in the 1875 Constitutional Convention (**Figure 3.5**). They drove much of what would be included in the ratified version of the constitution, especially checks on both public and private power.

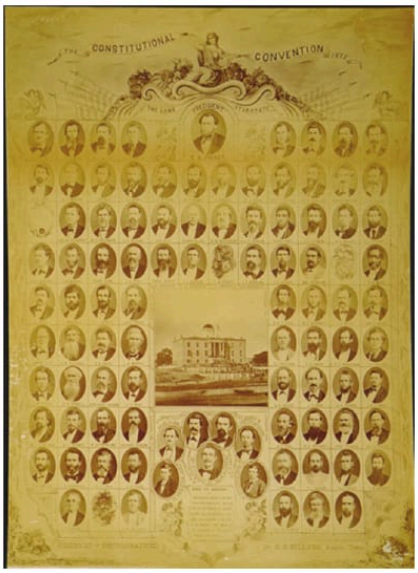


Figure 3.5 1875 Constitutional Convention. SOURCE: Texas State Library and Archives Commission.

The new constitution cut some gubernatorial powers (certain appointments and the declaration of martial law), state salaries, as well as expenditures. The power that the governor had over the executive branch was limited by creating independently elected executive positions—the plural executive—the governor had no control over and who the governor had to share executive power with. Limits were placed on the amount of time the legislature could meet in regular session, and special sessions were subject to the approval of the governor. The constitution also returned the school system to local control. And it replaced the declaration of the U.S. Constitution's supremacy in the 1869 Constitution with a statement on the "essential principles of liberty and free government":

> Texas is a free and independent State, subject only to the Constitution of the United States; and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government unimpaired

to all the States.[32]

Private powers were limited by the creation of Articles allowing for the regulation of rapacious railroads and private corporations, a major concern for the Grange as farmers relied on railroads to get their goods to market. Homestead protection—stemming from Spanish law—was retained. The banking industry was limited. State banks were abolished. Maximum rates of interest were established, and land speculation was checked. In addition, state debt was severely limited, which curtails the ability of the state to develop the infrastructure necessary for commercial activity or respond to a natural disaster.

The powers of government were thus strictly defined and limited. Many procedural details having to do with legislative processes and the design of the courts were laid out in the constitution, thereby making them difficult to modify. Judges were to be elected to office for limits periods, making them subject to the will of the majority—and calling into questions their independence from politics. While the state retained the power to pass laws regarding law enforcement both in terms of the penal code and criminal and civil procedures. The implementation of the law was returned to the local level by officials elected by the local electorate.

The principles of individual liberty, local control, and limited government laid down in the 1876 continue to be part of Texas's political culture to this day.

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3.3: The Texas Constitution Today

Given that Texas went through six constitutions in a forty year period, it seems unusual that it has had the same constitution in place for almost 150 years. But this is a bit misleading. While, with few exceptions, it has retained the characteristics and principles written into it in 1876—the same basic rights and liberties, the same basic structure and internal procedures, and the same governing institutions composed of individuals directly elected by the people—significant changes have been made to the document that reflect Texas's transition from a state where over ninety percent of the people lived on a farm or ranch. The agrarian interests of 1876 were best served by regulatory power over business, limits on spending, and local control. Expansive education and infrastructure needs, apart from transportation, were relatively limited. Today, Texas is a commercial juggernaut. It's Gross State Product would make it the tenth largest economy in the world if it were a sovereign nation. This kind of economic growth would have been impossible had the financial restraints in the 1876 version remained in place.

The Amendment Process

The clarity in the language in most—but not all—of the Texas Constitution makes it difficult to drive constitutional change through the Texas courts, as is done on the national level when the U.S. Supreme Court reinterprets the vague terminology of the U.S. Constitution. But the relatively low bar for changing the document itself makes the **amendment process** doable. A simple majority of voters must approve an amendment in Texas. Legislators propose an amendment. The Texas secretary of state drafts a ballot explanation of the amendment which must be approved by the attorney general (**Figure 3.6**). The ballot explanation is what the voters see on the ballot when they vote on the amendment. These must be published in newspapers that print official notices, and they must be sent to each county clerk, with explanations of the amendment. The county clerk posts this in the county courthouse. The governor plays no role in the process, a signature is not required. These amendments are often passed with legislation that then leads to the actual implementation of the desired policy.



Figure 3.6 Propositions for 2019 amendment election.

Soon after ratification, proposals to amend the constitution became increasingly common. Some of the amendments removed parts of the original constitution, though most either added new Sections, or added new language to existing Sections. The number of amendments proposed stayed relatively low until the mid-twentieth century, however. Spikes occurred in the 1960s and 1970s, and since the mid-1980s more often than not the legislature sees the need to offer more than a dozen amendments to the public each year. **Table 3.3** shows the frequency with which amendments have been approved by the voters since the first amendment was proposed in 1879.

Table 3.3 Number of Changes to the Articles of the 1876 Texas Constitution., 1879-2019

Article	Subject	Number of Changes
Article 1	Bill of Rights	+2143
Article 2	Separated Powers	no change
Article 3	The Legislature	+29,127
Article 4	The Executive	+1,556
Article 5	The Judiciary	+4,616
Article 6	Suffrage	+555
Article 7	Education	+7493
Article 8	Taxation	+11,267
Article 9	Counties	+4,534
Article 10	Railroads	-551
Article 11	Municipal Corporations	+800
Article 12	Private Corporations	-174
Article 13	Spanish and Mexican Land Titles	Repealed
Article 14	Public Lands and Land Office	-820
Article 15	Impeachment	+173
Article 16	Supplemental Provisions	+14,130
Article 17	Amendments	+219

* minus (-) and plus (+) indicate language remove or added to an Article.

The Texas Constitution has grown from 22,911 words in 1876s to 97,642 as of the constitutional election of November 5, 2019. This is the second longest state constitution. The longest is Alabama's which contains an incredible 388,882 words as of 2019. It is the longest constitution of any type in the world, and the reason is simple. All power is centralized in the state government. Local governments have little independent power, which was set in place in the nineteenth century to perpetuate the control of the status quo. Any change in local law has to happen at the state level. Most state constitution have less than 40,000 words. The shortest is Utah's at less than 9,000 words.

In the early years, voters were reluctant to pass amendments. In fourteen of the first thirty-seven constitutional amendment elections the voters refused to ratify any of them. In recent years it has been common for the voters to approve all, or most, of the proposed amendments. Turnout in these elections is often exceptionally low, though. It is not unusual for turnout to be less than five percent of the eligible population. Even for those voters who do vote, the language on the ballot can be confusing, vague, or misleading. For example, the amendment offered to the voters on September 13, 2003, which implemented financial limits on pain and suffering awards for malpractice simply stated:

> Proposing a constitutional amendment concerning civil lawsuits against doctors and health care providers, and other actions, authorizing the legislature to determine limitations on non-economic damages.[33]

It did not go into any specific detail regarding the nature of those limitations. Different groups provide analyses of the readability of ballot initiatives. The title of an amendment offered in 2017 proposing tax exemptions for partially disabled veterans with donated homes was judged to require thirty-six years of formal education to understand.

Proposals to change the constitution continue. As of this writing, over 200 proposed amendments have been introduced to the Eighty-Seventh Session of the Texas Legislature. Since amendments have to be introduced to the legislature as joint resolutions, it is easy to find and follow them through the legislative process. If history is any indication, anywhere from five to twenty will pass the legislature and be presented to the voters in November of 2021. By the time you read this, some of these listed in **Table 3.4** might well be in the constitution. Even those that do not succeed might be resubmitted when the legislature meets again in 2023.

Table 3.4 Amendments Proposed by the 87th Texas Legislature*

HJR 5	Proposing a constitutional amendment authorizing the issuance of general obligation bonds and the dedication of bond proceeds to the Brain Institute of Texas research fund established to fund brain research in this state.
HJR 5 -	Proposing a constitutional amendment authorizing the issuance of general obligation bonds and the dedication of bond proceeds to the Brain Institute of Texas research fund established to fund brain research in this state.
HJR 7 -	Proposing a constitutional amendment to limit the time that a person may serve as a member of the Texas Legislature.
HJR 13 -	Proposing a constitutional amendment to authorize and regulate the possession, cultivation, and sale of cannabis.
HJR 26	Proposing a constitutional amendment to authorize the operation of casino gaming in certain state coastal areas to provide additional money for residual windstorm insurance coverage and catastrophic flooding assistance in those areas and to authorize the Kickapoo Traditional Tribe of Texas to conduct casino gaming by executing a gaming compact with this state; providing for occupational licensing; authorizing fees; limiting certain taxes and fees.
HJR 41	Proposing a constitutional amendment to require the attorney general to appoint a special prosecutor to prosecute certain offenses that are committed by peace officers.
SJR 21 -	Proposing a constitutional amendment providing for an annual state budget and annual legislative sessions for budget purposes.
SJR 24 -	Proposing a constitutional amendment to prohibit the legislature from requiring a license or permit for the wearing of arms.
SJR 68 -	Proposing a constitutional amendment exempting this state from daylight saving time.

*Joint resolutions, such as a HJR (House Joint Resolution) and SJR (Senate Joint Resolution) are used to propose amendments to the Texas Constitution.

What Has Change and What Has Not

The following description of each Article in the Texas Constitution paints a picture of the Texas Constitution under which Texas is governed today. Understanding what has changed and what has not helps isolate the trends in order to determine what types of changes are likely to continue into the future.

Article 1 The Bill of Rights This has grown from twenty-nine Sections with 1,450 words to thirty-four Sections with 3,393 words, but while it has more than doubled in size, the additional language is concentrated in a small number of Sections. Of the twenty-nine original Sections in the Bill of Rights, twenty-three have not been changed. These include an expansive proactive declaration of religious liberty, the rights and responsibilities of free speech and the press, due process rights, the right of habeas corpus, and trial by jury. As with other states, it contains a right to keep and bear arms for the purpose of self-defense.

> Section 29 deserves special attention because it declares that the rights contained in the first Article cannot be changed:
>
> To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is

> excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

The additional terminology was added primarily to two preexisting Sections—on bail and eminent domain—and in five that have been added since 1876. Exceptions for bail began to be

added in 1956 and have continued thought 2007. These exceptions are for previous felony convictions, violations of terms of release, and violations involving family violence.

Section 3, which e stablished equal rights for free men, was changed to include "sex, race, color, creed, or national origin" when Texas ratified the Equal Rights Amendment (banning gender-based discrimination).

Additions include: stating the right of, and compensation for, victims of crime in 1989 and 1997 respectively; the right to access to and use of public beaches in 2009; and the right to hunt, fish, and harvest wildlife in 2015.

In 2005 Texas passed a ban on same sex marriage and prevented the state and local governments from recognizing those entered into elsewhere, but the ban was overturned when the U.S. Supreme Court legalized same-sex marriage in *Obergefell v. Hodges* (2015). It remains in the constitution however. Such provisions are called deadwood, and will likely be removed at some point in the future when doing so is uncontroversial.

Article 2 The Powers of Government No changes have occurred in Article 2:

> The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

Article 2 outlines the structure of government into three separate branches (executive, legislature, judiciary) with checks and balances through independent government powers.

Article 3 The Legislative Department The legislature is still bicameral and the terms have not changed. They still meet part time and are paid low wages, you can see the language setting the compensation and duration for sessions by clicking on this link to Section 24. But this Article has grown the most. From 3,811 words in fifty-eight Sections; it now has 32,938 words in sixty-seven Sections. The growth has been uneven. Twenty eight Sections remain unchanged, most involving procedural issues and basic checks and balances. Some procedures have been clarified, including the timing of the legislative process, the role of the governor in declaring items emergency matters, the process for filling vacancies and for taking record vote in each chamber, and setting salaries and the length of regular sessions. The added language has primarily been to expand the ability of the legislature to go into debt.

In 1948 an amendment was ratified allowing for the creation of a Legislative Redistricting Board after each census (Section 28), and in 1991 another was ratified creating the Texas Ethics Commission (Section 24-a) which sets salaries for legislators with the approval of the voters in a referendum. Most of the amendments regarding procedures have remained unchanged. The vast majority of the changes have been made to three Sections: 47, 48, and 49.

Section 47 concerns gambling. It originally stated that the legislature shall pass laws prohibiting lotteries and gift enterprises in the state. This reflects the social conservatism of the state, which continues to this day. Beginning in 1980, these laws began to be loosened. Bingo, charitable raffles, and lotteries—including the one run by the Texas Lottery Commission, were allowed. Betting on dog and horse racing was also allowed in licensed facilities.

Section 49 is by far the largest section in Article 3, and the entire constitution as well. As originally written, it was relatively short and simply placed limits on the amount of debt the state could carry, and what purposes allowed for debt, which included repelling invasion and suppressing insurrection. Since then it has been amended to allow for the selling of bonds, and the creation of funds for specific purposes—primarily business support and infrastructure development. Without their addition to the constitution, they would of course be unconstitutional. In the past several decades, almost 18,000 words in dozens of separate sections have been added in order to authorize these expenditures.

The process began in the 1940s—spurred by the return of soldiers from World War II to approve the creation of the Veteran's Land Board and two dedicated funds for each: The Veteran's Land Fund, and the Veteran's Housing Assistance Fund. These have been followed by a large number of similar bonds and funds dealing from issues as diverse as water development projects, prison

and highway construction, and rail relocation. The amendment creating the Rainy Day Fund—known as the *Economic Stabilization Fund*—was added to this Section (49-g) in 1988 following an oil bust. Most recently the voters approved an amendment in 2019 creating the Flood Infrastructure Fund to allow for the construction of flood control projects.

Similar expansions have been made to Section 50, which originally prohibited the lending of money by the state to a "person, association, or corporation." This has been amended to allow for student and farm and ranch loans, as well as loans to local governments to maintain equipment.

Section 51 also had to be amended in order to receive and redistribute federal matching grants for assistance to needy persons.

Nine sections have been added, three of which deserve special note: these are Sections 62, 66, and 67. The first amendment was ratified in 1962, and modified in 1983 during the height of the Cold War and the fear that enemy attack (including nuclear) could eradicate the governments in Washington D.C. as well as Austin. The section created a process for the continuity of state and local government should such an attack occur.

Section 66 limits the financial liability for non-economic—or punitive—damages in a civil trial. The amendment on malpractice awards is discussed earlier in this chapter. This amendment changed the financial liability in the healthcare industry. Members of the medical profession, and the manufacturing industry, promoted its passage, as Texas juries had a tendency to be very generous in awarding large settlements to victims of negligence.

The final section in Article 3, Section 67, was originally added in 2007 and was amended in 2019. In an effort to increase the ability of the state to be a center of cancer research, and reap the rewards of the development of cures for it, voters approved the selling of up to three billion dollars in bonds to create and fund the Cancer Prevention Institute of Texas. In 2019, voters approved an additional three billion dollars.

Article 4 The Executive Department This has been changed slightly since 1876. Article 4 has 1,556 additional words, which brings it to 4,272 total, but it remains at 26 sections. Eleven of these remain unchanged. As with the legislature, the basic procedures, primarily regarding elections, relations with the legislature and the bill making process, remain the same. Doing so allowed for an expansion of power, which was deemed necessary to regulate economic affairs within the state.

The executive power remains split into separately elected offices, though these have changed slightly as the position of treasurer was eliminated in 1995. In 1907 the legislature also created the office of the commissioner of agriculture.

The role of the governor in terms of the legislature is largely unchanged, including the power the office has over special sessions. A major rollback in the governor's power to issue pardons and paroles occurred in 1936 following allegations that Governor James Ferguson accepted bribes in the mid-1920s to issue over 3,500 pardons. An amendment was added allowing for the creation of the Board of Pardons and Paroles which was charged with making recommendations for reprieves, commutations, and pardons. The governor was limited to doing so only in cases of Treason.

While the governor's office remains weak, especially in comparison to those in other states that have a unitary executive that appoints all other executive officials, subtle changes have been made to increase the power of the governor. Key among them was the 1972 amendment that expanded the governor's term, along with all other elected executive officers from two to four year terms. They run for office in midterm elections, meaning elections where the president is not on the ballot.

Article 5 The Judicial Department This article created the judiciary, and it grew from twenty-eight Sections and 4,008 words to thirty-two Sections and 8,624 words. It has changed considerably since 1876. Only two Sections have not been amended (10 and 24). The additional language concerned two principal changes.

The first occurred in 1891 when thirteen separate amendments were added to the document. Collectively they were referred to as Texas Appellate Court Reorganization, and it was meant to correct what became a flaw in the design of the original court system, as well as facilitate the larger number, and variety of cases that came to the court as the state was changing. Texas has always had a system with two top courts, but it did not have an intermediate level of appellate courts until created by these amendments. Initially it had three districts and was expanded to fourteen by 1980. The Court of Appeals was renamed the Court of Criminal Appeals. Beginning In 1948 a series of amendments established an age of retirement and in 1965 a State Commission on Judicial Conduct which is charged with investigating judicial misconduct and removing judges if deemed appropriate.

Article 6 Suffrage The power to determine who could vote was fully vested in the states until after the Civil War. It continues to be an area of conflict between the national government and states like Texas since the national government has been used to expand voting rights over the resistance of those states. It still contains five Sections, and has been roughly doubled in size to just

under 1000 words. The only section unchanged protects voters from arrest going to and returning from the polls. The rest have been changed slightly, but significantly, as Texas's history has placed it under the watch of the national government in regards to voting rights and practices. Many of the changes made to this section had less to do with the desires of the state and more to do with pressures placed on it from the national government.

Changes have been made to the classes of people not allowed to vote and language has been added to cover voter registration. Changes to voter eligibility included reducing the eligible age from twenty-one to eighteen, and replacing restrictions to "idiots and lunatics" to those "determined mentally incompetent by a court." Two restrictions were removed, these are "paupers supported by any county," and "All soldiers, marines and seamen, employed in the service of the army or navy of the United States." After modifications in 1932 and 1954, the later was the subject of a 1965 United States Supreme Court decision, *Carrington v. Rash*. Texas attempted to restrict members of the armed forces residing in the state to only vote in the counties they resided in when they joined the service. The Supreme Court argued that this was a violation of the Fourteenth Amendment's Equal Protection Clause.

Section 2, on voter requirements, was added in 1896. Even if you are eligible to vote, you do not become qualified to vote unless you are registered according to the rules established by the legislature. These were made applicable to presidential elections in a separate amendment in 1966. This proved to be an alternative way for the state to suppress voter turnout, without making it illegal. In 1902 Section 2 was amended to include the poll tax (fees charged for voting), which would be repealed in 1966 after the Twenty-Fourth Amendment to the United States Constitution made them unconstitutional. At this time, in 1903, the state legislature also passed the Terrell Election Law allowing race-based voter restrictions in primary elections, another method at the time of suppressing the vote. Until 1921, the constitution allowed for non-citizens to vote if they intended to become citizens within six months. This was changed in 1921 when voters passed an amendment stating that only native born or naturalized citizen could vote. ***Article 7 Education—The Public Free Schools*** This grew from fifteen to twenty Sections and from 1414 words to 8,907. This is a significate increase of almost 7,500 words. Five Articles remain unchanged. These include the introductory Section stating the duty of the legislature to support and maintain an "efficient system of public free schools."

Aside from providing the basic rules regarding curriculum and textbooks, the state's role in education is primarily financial. This includes authorizing local government to add their own funding as well. Most of the content of the original article involved how funds would be drawn from public lands and placed into various funding streams. The bulk of the changes made have clarified the nature of that funding, which includes establishing the Permanent School Fund, the Available School Fund, the Permanent University Fund, the Higher Education Assistance Fund, the Available University Fund, the Texas Tomorrow Fund, and the National Research University Fund. In the 1960s, conditions were placed on the nature of the taxes that could be collected by independent school districts, and junior college districts, the authorization of which had already been established.

In 1969, Section 7 was repealed. It stated that separate school had to be provided for White and colored children. Similarly, the legislature was to—when practicable—create a college or university branch for "the colored youths of the state." As amended, this became Prairie View A&M University as a branch of Texas A&M University.

Article 8 Taxation and Revenue Allowances for taxes had been part of the original version of Article 8 and taxes, were limited in order to keep tax rates low in the state. Economic forces were in motion, however, that would seek to make it more conducive to the interests of both industry and the urban areas that supported them, so this section has grown considerably. As the state has expanded and become more complex, issues related to funding have become more controversial and increasingly confrontational. From eighteen Sections and 1,326 words, it now has twenty-nine Sections and 12,593 words. Five Sections remain unchanged, these focus on the basic ability of the state to tax individuals and corporations, that taxes are to be by general laws and for public purposes, the inability of the state to release individuals from payment of taxes— expect "in case of great public calamity,"[34] and the requirement that all property to be assessed for purposes of taxation. The explanation for the growth in language is simple. The original language was necessary to place limits on the taxing authority of both the state and local governments, loosening tight limits on state and local spending as they made the development of infrastructure difficult.

Section 1 of the original constitution allowed the legislature the right to pass laws imposing a variety of taxes. Since 1876 over a dozen subsections and approximately 7000 words have been added limiting that power, including establishing homestead exemptions, limitations on the assessment of property, and exemptions of property used in manufacturing, farming, pollution control, and water conservation. This Section also contains exemptions for items

related to commercial enterprises and activities the state wishes to promote. Recent examples include an exemption for taxing raw cocoa and green coffee beans in 2001 and rural economic development.

As the constitution authorizes local governments to collect property taxes, and as local needs have expanded, measures have been added to place limits on increases in local property taxes and who is required to pay them. Ninety amendments to this

section have proven to be an efficient way to place overall limits on taxes. This also applies to the spending side, as Section 22 contains limits on the increase of spending in the state.

Article 9 Counties and Article 11 Municipal Corporations These original Articles were quite small. Article 9 contained two Sections and 472 words; Article 11 had ten Sections and 815 words. The original sections in Article 9 gave the legislature the power to create counties, placed limits on their minimum size, and protected the borders of existing counties. The second placed limits on the ability of the legislature to remove county seats. There is mention that county seats should be within five miles of the geographic center of the county. This is important because the county seat is where residents can conduct business with the state. A rule of thumb from the day was that people should be no further than one day's travel from the county seat.

Over the years twelve Sections and over 4,500 words have been added to Article 9, and three Sections and 800 words have been added to Article 11. The content of Article 11 covers counties as well as cities. It begins by defining counties as legal subdivisions of the state and gives the state the authority to pass laws regarding the construction of "jails, court-houses, and bridges" and "the laying out, construction and repairing of county roads." The increase in railroad transportation fueled boost in manufacturing, and the increase of manufacturing led to the growth of urban areas. As cities grew, their residents sought greater autonomy, as well as resources. In 1909 and 1912 Section 5 was amended to allow cities greater autonomy in conducting their own affairs. Larger cities were granted home-rule status, which expanded their ability to pass laws as they saw fit, and the ability of counties to tax their residents to construct roads and bridges, and to create special districts for emergency services, among other services demanded by their residents.

Article 10 Railroads, Article 12 Private Corporations, and Article 14 Public Lands Three Articles have been reduced in size. All concern the regulation of business, which could be heavily regulated according to the original constitution. In the late nineteenth century, the state was subject to the power of out of state corporate interests, particularly railroads and monopolies. These were rife with corruption and abuse, which led to a need to control banking and railroad companies in particular. Economic forces, however, were in motion that would seek to transform the document to make it more conducive to the interests of industry. Key restrictions that would be whittled away were business regulations that were written into the original constitution and the tight limits on state and local spending that made the development of infrastructure difficult.

Article 10 contained nine Sections touching on a variety of aspects of business, including limits on ownership and the discretion railroad companies had in where they laid their tracks. This has since been reduced to one Section—Section 2—declaring railroads to be common carriers. You can see the changes yourself by clicking on the original language of Article 10 here, and its current language here. This makes then subject to regulation to, among other things, "correct abuses and prevent unjust discrimination and extortion" in the rates charged. The term common carrier is important because it refers to a person or company that offers to transport items for the public. These can be physical items or non-physical like text and voice messages and data, as can oil and gas pipelines. As common carriers they can be regulated in the public interest.

Article 12 has been reduced to only stating they can only be created by laws passed by the legislature, and these laws shall protect the public and individual stockholders.

Article 14 was reduced to the single section establishing the land office, declaring that all land titles be registered with it, and that the office be self-sustaining. Sections which had limits on grants to railroad companies, and guaranteed homesteads to qualified individuals—heads of households and single males over eighteen—were removed. Sections related to resolving disputes over land ownership were removed following the ultimate resolution of these claims.

Article 13 Spanish and Mexican Land Titles Article 13 was completely removed in 1969 because there were no outstanding disputes that needed resolution.

Article 15 Impeachment Article 15 has not changed substantively since 1876. The process is similar to that on the national level. Members of the plural executive and all state judges, including district court judges, are subject to removal from office based on a simple majority vote to impeach in the House of Representatives, followed by a two-thirds vote to remove from office in the Senate. As opposed to the U.S. Constitution, there is no clear statement regarding why an official can be impeached, nothing similar to the high crimes and misdemeanors standards. Only two officials have been impeached and removed from office in Texas history. Political conflicts between Governor James Ferguson and the University of Texas—which culminated in Ferguson's use of the line item veto to remove all appropriations to the university—led to his impeachment in 1917. He was also accused of embezzlement and misappropriation of public funds. In 1975, District Judge O.P. Carrillo was impeached and removed from office following a conviction on income tax charges.

Article 16: General Provisions This section contains items that were judged to not fit neatly anywhere else in the constitution. This includes the surviving aspects of Spanish law, specifically Section 15 which establishes communal property for spouses and

Section 50, which concerns homestead protection. It has been amended greatly. In 1997 Section 50 was altered, controversially, to allow for reverse mortgages, meaning that people could borrow money against the equity they have built up in their homes. Language was inserted in order to ensure that borrowers understood the risks they were taking since failure to pay back the mortgage can result in the loss of the home.

Section 16 contained prohibitions on banking, and can be used as an example of the changes in the document related to the increased power of businesses in the state. Beginning in 1904, a series of amendments were added allowing the legislature to pass laws incorporating state banks and savings and loans. These provisions are contained in Section 16. Overtime these allowances have been expanded in order to facilitate the expansion of the financial sector in the state.

Section 20 allows for the legislature to pass laws related to alcohol, including the creation of a state monopoly on the sale of distilled liquors. The industry is divided into brewers and distillers, distributors, and sellers. This arrangement benefits enough of the industry that the three-part regulatory system has been maintained over the objection of smaller interests— notably brewers—which would like to be able to sell their product directly, as the wine industry has been allowed to do since 2003. Local areas are still permitted to have local option elections to determine what can and cannot be sold in the state.

Article 17 Amendments The amendment process, discussed previously in the chapter, is detailed in Article 17. Fittingly, it is the last Article of the Texas Constitution.

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33. HJR 3, https://capitol.texas.gov/tlodocs/78...l/HJ00003F.htm.

34. Tex. Const. art. VIII, § 10, https://tarlton.law.utexas.edu/const...xation-revenue.

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3.4: Prospects for Revision

Is the Texas Constitution too confusing? The answer from most observers across the board is a resounding *yes*. You may have noticed that certain subjects are dealt with in a variety of different Articles. For example, the structure and function of counties is mentioned in the Articles on municipal corporations and the judiciary in addition to Article 9. It would make more sense if it was all contained in one Article. So why not clean it up? Why not have a rewrite of the Texas Constitution and make it easier to understand?

After years of frustration with the clumsy structure and poor organization of the Texas Constitution, the Sixty-Second Session of the Texas Legislature proposed to the voters that a Constitutional Convention should be held to revise it. On November 7, 1972, the voters approved the Convention. The next session of the legislature created a Constitutional Revision Commission, which reported back a series of recommendations encompassing most of the existing document except Article 1—the Bill of Rights—which, as you saw in the previous description of the Article 1, cannot be changed as it must remain inviolate.

In an unusual move, the Sixty-Third Legislature met at a Constitutional Convention from January 8 to July 30, 1974, but it did not approve the proposed constitution by the necessary two- thirds vote. The subsequent meeting of the legislature tried to resurrect the proposal by turning some of its provisions into separate constitutional amendments. These were all rejected by the voters. You can see the proposed amendments and the results of the election that defeated them.

The proposals would have made state government more streamlined and efficient, and apparently that was a problem with a population that had grown comfortable with the cumbersome nature of the existing constitution. Among the rejected changes were annual sessions for the legislature along with longer terms and higher pay, cabinet level positions to assist the governor, a unified Texas Supreme Court with appointed judges subject to non-partisan retention elections.

While this might provide for a government that more effectively addresses the needs of the people of the state, it would do so by granting it additional powers. That went against the grain of the citizens of a state that, while rapidly becoming modernized, was still largely agrarian—at least in spirit. The consequence of this defeat? No serious movement has developed to change the fundamental design of the Texas Constitution.

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3.5: Conclusion

Clearly, the structure of the 1876 Constitution resonates with a majority of the people of the state. It is fundamental law, which includes establishing the authority by which a government rules, outlining the basic structure of government, defining and limiting government powers, and protecting the civil rights of the people. The constitution determines what laws can be passed and what the governmental processes are. Consequentially, changes to the Texas Constitution must be approved by the people. After all, the Preamble states that the constitution is ordained and established by the people, and the will of the people is more fundamental than the will of the legislature.

Nevertheless, significant changes have been made to the document. Over 500 amendments have been made to the 1876 version. These amendments did not change much of the constitutional structure, or many of its basic principles, but they did change the powers within the document to reflect a momentous shift in the nature of the state from a lightly populated, poorly educated agrarian state to the commercial powerhouse it is today. Ideally, this chapter should make you more aware of the importance of constitutional language in determining the nature of governance in the state. Along with that, it is important to recognize the political forces that are able to successful push for change

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3.6: Key Terms and Concepts

Amendment Process. The prescribed manner by which a constitution can be changed. It involves supermajorities by both chambers of the legislature and a simple majority vote by the electorate.

Black Codes. Laws passed immediately after the end of the Civil War intended to govern the conduct of African Americans.

Common Law. Originating in Britain, the body of decisions made by judges over several centuries. These form the form the basis of British law in the same way that Castilian Law forms the basis of Spanish Law.

Consent. The idea that a government's power is only justified and lawful when consented to by the people.

Frontier Justice. An informal system of punishment in an area that lacks a formal system of law and order.

Grange. An agricultural organization founded in 1867 to represent the interests of the agrarian sector. They were especially influential in the drafting of the 1876 Texas Constitution.

Jacksonian democracy. An era of democracy beginning with the presidency of Andrew Jackson. While it retained racial restrictions and the right to own slaves, it promoted the expansion of participation to non-elites, and the design of governing systems that were more readily controlled by the electorate.

Judicial Review. A process by which executive and legislative actions are subject to review by the judiciary. It I an essential component of checks and balances.

Plural Executive. An constitutional executive apparatus where power is divided into a variety of offices. The purpose is to limit executive power. In Texas these include the lieutenant governor, attorney general, comptroller, and secretary of state, in addition to the governor

Radical Republicans. A faction of the Republican Party after the Civil War that sought to punish southern states for the war, and impose racial equality upon them.

Reconstruction. the period from 1865 to 1877 that attempted to transform southern states prior to their readmission to the union.

Republican Government. Also known as indirect democracy. It is a type of democracy founded on the principle that elected persons representing a group of people, should pass laws as opposed to direct democracy where people rule themselves.

Slavery. The state where someone is forbidden to quit their service for another person, and is treated as property.

Suffrage. The right to vote, also referred to as franchise. A right fully granted to states until the 15th Amendment.

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4: POLITICAL PARTIES IN TEXAS

By the end of this chapter, you should be able to:

- Explain the political ideology of liberals and conservatives.
- Discuss the purpose of political parties.
- Assess the evolution of political parties in Texas.
- Analyze the effects of a true two-party system.

Red, Blue, Purple?

The color associated with political parties has changed over the years, introduced by the colorized maps used in election coverage on television. Just as the donkey and the elephant had come to represent the parties in the 1800s (**Figure 4.1**), blue and red became the standard for states that lit up blue for Democrat Al Gore and states that lit up red for Republican George W. Bush. Now, we talk about blue states—those that can be counted on to vote for the Democrat in a presidential election—and red states that can be counted on to vote for the Republican.

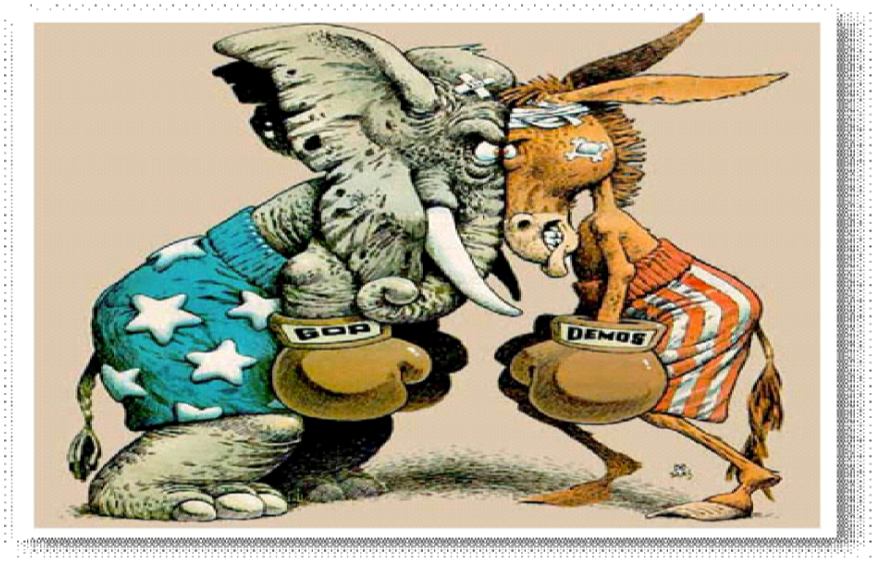


Figure 4.1 The seventh president of the United States, Andrew "Jackass" as Andrew Jackson was called by his detractors founded the Democratic Party in 1828, embracing the name as a symbol of his common-man roots and donkey-like determination. The elephant didn't emerge until the 1870s, however, when a cartoonist used the colossus to represent the Republican vote. Both images are now staples of American visual culture.

Did you know Texas used to be a blue state, and that, in fact, no Republican won a statewide office from 1874-1961? In fact, from the Civil War until the 1960s, the Democratic Party dominated politics in Texas. It's hard to imagine that Texas was a Democratic state when in past years it's felt like we did not even need to count the votes to know that the Republicans won.

So, Texas was a blue state, then a red state, but what about now? Many people say that the rising Latino population in Texas will turn the state purple. But what does that mean? If the Democrats are blue, and the Republicans are red, who's purple? Do we have another political party? No, a purple state simply means that the state could go either way. Another name for it is a *swing state*. It is a state in which both parties stand a chance and both parties will probably campaign hard in a purple state to try to swing the vote their way.

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Learn more
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Click on "New" to build out your guide.

4.1: What Is a Political Party?
4.2: A History of Political Parties in Texas
4.3: Welcome to the Party! Examining Party Organization
4.4: Conclusion
4.5: Key Terms and Concepts

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4.1: What Is a Political Party?

So, what are political parties? **Political parties** are organizations with a specific set of values and beliefs that aim to gain control of government so that they can influence policy. Political parties seek power, and the way they do that is by winning office. Political parties thus serve a number of useful functions like selecting candidates, raising money to fund campaigns, and providing a party label to aid you as a voter in selecting the right candidate to vote for when you do not know anything about the candidate.

Ideology vs. Party

Political parties represent ideologies but the two are not the same. **Political ideology** is set of ideas, attitudes, or values about government and politics held by individuals. Currently the Republican Party represents a conservative ideology, and the Democratic Party represents a liberal ideology. These ideologies lead to different positions on policies. The differences among these groups comes down to how they view government involvement, whether or not they want a more limited or more active role for the government in the economy or in such social issues as abortion or gay marriage. Here's a look at political ideology so you can better understand why political parties pursue certain policies ***Liberals*** On the economic dimension, a **liberal** favors policies to equalize the inequalities in income. Liberals favor a positive government role. In other words, liberals want the government to take an active role in equalizing those inequalities. Liberals take ownership of certain issues like the environment and expansion of social services.

On the social dimension, liberals value government intervention for environment, equality, and minority rights however, they want government out of social issues. So, on the social dimension, issues like climate change are often embraced by liberals and they want the government to take action to slow or stop climate change.

Conservatives On the economic dimension, a **conservative** wants limited government involvement, and they favor capitalism and policies to promote economic

growth. Conservatives, on the social dimension, feel that religion and traditional family values are important, and they want government to promote these through intervention if needed.

For Further Reading:

Political Typology Quiz

Take the Pew Typology quiz to see where you fall on the ideological spectrum and what percentage of the U.S. population is the same as you.

Partisanship

You have seen that political parties organize to represent a political ideology. Ideology, however, is associated with but not the same as **partisanship**, or loyalty to a particular party. People who are partisan, strong supporters of the party, seem to agree with their political party's position on most if not all issues like the economy, environment, immigration, guns, and health care (**Figure 4.2**). But you can be conservative or liberal no matter what parties happen to exist in a given country or point in time.

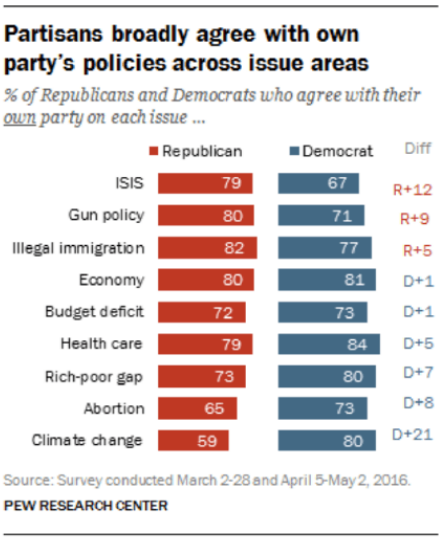


Figure 4.2 Partisan Agreement: SOURCE: PEW Research Center.

Third Parties

Democrats and Republicans are not the only parties, though they dominate what has come to be called our **two-party system**. **Third Parties** have played a significant role in politics, from the anti-immigration American Party of the 1850s, to the agrarian People's Party that grew out of the Grange movement and was particularly influential in Texas after the Civil War, to the Progressive Party, founded in 1912 by former president Theodore Roosevelt to run for president after he failed to win the Republican nomination and which ultimately ushered in a slew of social reforms such as minimum wage and women's right to vote, and more recently the La Raza Unida Party of the 1970s that championed Latino rights and won many local elections in South Texas.

Third Parties that are most active in Texas today are the Green Party, advocating environmentalism and social justice, and the Libertarian Party, advocating an individual autonomy, or self-government, ideology.

Libertarians are particularly strong in Texas, with over eighty Libertarian candidates on the ballot in 2020.[1] On the economic dimension, a **Libertarian** is in agreement with conservatives in that they want limited government involvement and favor capitalism and policies to promote economic growth. On the social dimension of ideology, Libertarians differ from conservatives. Libertarians want little government involvement in social matters and instead prefer that social matters be left up to the individual to decide. All in all, Libertarians want a limited government who does not take an active role in the lives of its citizens. Ron Paul probably the most well-known Libertarian from Texas put it this way: "If you like small government you need to work hard at having a strong national defense that is not so militant. Personal liberty is the purpose of government, to protect liberty—not to run your personal life, not to run the economy, and not to pretend that we can tell the world how they ought to live."[2] Paul served in Congress from 1976-1977, 1979-1985, and 1997-2013, and ran for president in 2008.

For Further Reading:

In close elections, two opponents can be better than one

Read this analysis of effect of third parties on elections in Texas.

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1. "More than 80 Libertarian candidates will be on the ballot across Texas in 2020," Libertarian Party of Texas, https://www.lptexas.org/.

2. Ron Paul. AZQuotes.com, Wind and Fly LTD, 2021. https://www.azquotes.com/quote/226910.

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4.2: A History of Political Parties in Texas

The Democratic and Republican Parties have not always existed. When George Washington became the country's first president, there were no parties. But parties began to form around the issue of how powerful the new federal government should be. Federalists favored a strong central government. The Democratic-Republican Party did not. The National Republican Party replaced the Democratic-Republican Party in 1824, primarily in opposition to Andrew Jackson. Andrew Jackson then founded the Democratic Party we know today in 1826 and ran for president. The Whigs replaced the National Republican Party in 1833, again, primarily in opposition to Andrew Jackson. The Republican Party we know today, founded in 1854, grew out of the anti-slavery faction of the Whig Party. Not only can party names change, but what policies and values a party represents can change, too (**Figure 4.3**). The Democratic Party once supported slavery but today fights against racial discrimination. The Republican Party dominates the South, fighting to maintain traditional norms.



Figure 4.3 Timeline of Major Parties in the United States. SOURCE: Created by the author.

Beginnings

Texas had no organized political parties before joining the Union in 1845. In the early days of settlement, those who came to Texas were happy to leave government and politics behind. Since there was no strong party tradition in the Republic of Texas, elections held after the state gained its independence in 1836 primarily reflected support for individual candidates.[3]

During the period of the Texas Republic (1836–1845), Texas politics was dominated by Sam Houston, the hero of the war for independence from Mexico. Although there were no political parties, pro-Houston and anti-Houston factions existed.[4]

However, the majority of early settlers came from the South and brought their past political allegiances to Andrew Jackson's Democratic Party with them. The state's fledgling Democratic Party evolved over the years from a very loose association of merchants, doctors, lawyers, and other professionals into an organized, unified party without any legitimate opposition. Nationally, the Democrats were pro-slavery, while their opponents, the Whigs, were divided on the issue. Designed largely to challenge the Jacksonian Democrats, the Whigs were a diverse group comprised of people who supported a variety of issues, such as moral reform, opposition to the harsh treatment of American Indians, and the abolition of slavery. The Democrats had also endorsed the admission of Texas to the Union during the 1844 presidential campaign, whereas the Whigs had waffled on the issue. Texas became a state in 1845 as a slave state, with most Texans supporting Democrats.[5] Even so, it was some time before Democrats adopted any sort of a statewide network or arranged for scheduled conventions. Contests between rival factions evolved into a more defined stage of competition with the development of the Democratic Party in Texas as a formal organ of the electoral process during the 1848 presidential contest among three candidates: Whig Zachary Taylor, a war hero in the Mexican- American War who wanted to preserve the Union; pro-slavery Democrat Lewis Cass; and anti- slavery Martin van Buren, of the Free Soil Party. Taylor won the election, but the firestorm around slavery would not be quenched.

Beginning in the 1850s, the Democratic Party was solidly aligned with the pro-slavery, wing of the national party, and factionalism in the party essentially ceased.[6] Texas, despite opposition by Sam Houston and others, seceded from the Union and joined the Confederacy in 1861. The North, led by the Republican administration of Abraham Lincoln, defeated the Confederacy and officially freed those who had been enslaved. Under the aegis of the Congressional Reconstruction Act of 1867, Union troops then occupied the former Confederate states to ensure the rights of freedmen and women were recognized,

During Reconstruction (1863 to 1877), the divisions between Unionist and Secessionist Democrats once again became intense and more pronounced, Former Confederates found themselves under the rule of northerners, the military, and—even worse for most—newly freed African Americans who now assumed leadership roles in the military and the postwar government.[7] It was also during Reconstruction that the state saw the creation of the Republican Party in Texas. African Americans emerged as a new group of voters who consistently supported the Republican Party. In fact, because former Confederates were required to take an **Ironclad Oath** (an oath that they would never bear arms against the Union or support the Confederacy) in order to regain their right to vote, ninety percent of the Republican Party's members were African American. Despite the strong support of African Americans and groups that had opposed slavery and secession (such as the Northern Methodists of Texas whose Reverend Anthony Bewley was lynched for his belief and Bexar County's German Texans who were massacred by Confederate soldiers at the Battle of Nueces in 1862), the Reconstruction period was troublesome at best for the new Republican Party.[8]

Many former Confederates chafed under what they believed were the dictatorial and vindictive policies of the Congressional Reconstruction Act, and the Reconstruction period was troublesome at best for the new Republican Party. Edmund J. Davis, a Unionist and a Republican, became governor in 1870, and his four-year administration was marked with bitter controversy, voter suppression, scandal, corruption, and oppression.[9] Ultimately, Davis and the Republican Party prompted a profound response in Texas by those who believed they were subjected to the tyranny and despotism of a foreign conqueror identified with the Republican Party. Democrats captured the Texas legislature in 1872, and in the 1873 gubernatorial election Democrat Richard Coke, a judge and former Confederate who had fought as captain of the Fifteenth Texas Infantry, easily defeated Davis.[10]

The Democratic Party and a One-Party State

In this crucible, Texas politics for the next century was forged. The Democratic Party became the vehicle of southern resistance to northern domination and of White opposition to the granting and exercise of full citizenship rights for African Americans, particularly voting rights.[11] The final Democratic measure to overturn all Republican influence in Texas came with the ratification of the Constitution of 1876, which reversed most of the acts and effects of the Davis regime.[12] As a result, when Reconstruction ended in 1877, Texas—like the other former members of the Confederacy—was a solid **one-party state** with the Democratic Party in power.[13] For the next century, the Republican Party was not a viable force in Texas politics. The agrarian Grange movement had more influence in its efforts to protect farmers who had been crushed by devastated crop prices and the erratic transportation fees charged by railroads during the financial panic of 1873. Their People's Party was one of the most successful of the historic Third Parties discussed earlier in this chapter and their reforms became part of policies promoted by the Democratic Party, including the creation of the Railroad Commission to regulate price gouging. While the Grange movement had its successes during that period, the Republican Party failed to win a single statewide race and controlled only a handful of seats in the legislature.[14] One-party Democratic control remained the norm until the late 1960s, with telling effects on politics and public policy (**Figure 4.4**).[15]



Figure 4.4 The Post-Civil War Democratic Party. SOURCE: Created by the author.

It is often difficult for younger White Texans to understand the animosity that their White ancestors held for Republicans who governed the state during Reconstruction. Virtually no Republicans ran for statewide office for decades since doing so would have been futile. For the most part, it was politically impossible for any Republican to win elective office in the state. Because there was, for around 100 years, no loyal opposition to Democrats in Texas, the general election was essentially decided in Democratic Party primaries (elections in which candidates from the same party are seek the majority of the vote cast by members of the public who demonstrate their preferences only for their party's candidates). As a result, nominees from the Democratic Party usually ran unopposed in the general election.[16]

While a candidate's party label was (and, in many cases still is) the most important guide for an American voter in national elections, it was of little or no value in Texas. The state's voters usually had a choice between several candidates for each office, but they were all Democrats. Only limited debate on public policy was exchanged between liberal and conservative Democrats. Without party competition to foster more vigorous debate about the most critical state issues or to spur voter interest, most White citizens were apathetic, and voter turnout was very low. Be mindful that despite the fact that African Americans were granted the right to more actively participate in politics, they were often not able to freely exercise those rights because of the number of political obstacles placed in their path, including intimidation that included violence and lynching by the Ku Klux Klan.

The return to power of the Democratic Party did not resolve the stark differences between the competing factions within the party, however.[17] Interestingly, during this period, candidates of all ideological persuasions, including liberals, conservatives, members of the Ku Klux Klan, and those who ran on single-issues (like Prohibition), all ran as Democrats.[18]

Traditional party functions such as recruiting, financing, and conducting campaigns were performed not by the party but by informal, unofficial organizations, campaign committees, and other groups. Voters were generally uninformed about these groups and knew little, if anything, about who controlled the parties or their agendas. Consequently, when voters elected only Democrats to the officers of governor, lieutenant governor, attorney general, comptroller, and other offices (**Figure 4.5**), they were not electing a Democratic "team" to govern in Austin. Rather, they were electing independent officials who were frequently political rivals and shared little except personal ambition and the Democratic label. The parties acted to emphasize, not overcome, the limited government created by the state constitution,[19] as the Texas Constitution limits the role of the governor by fragmenting power in the executive branch, dividing the power traditionally vested in the governor amongst other government officials. The term *plural executive* describes this fragmented power.

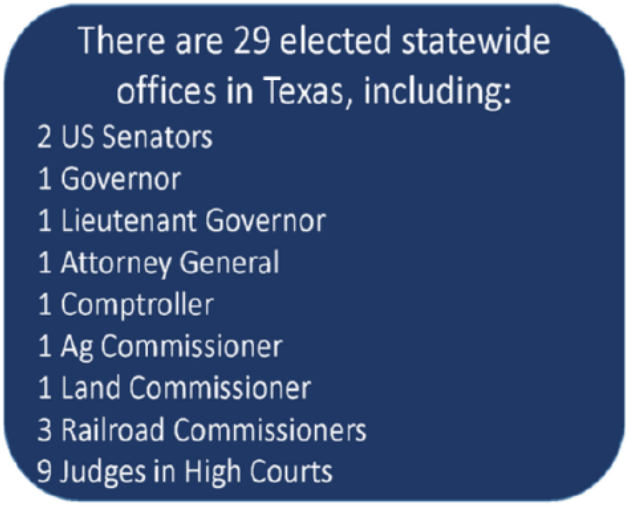


Figure 4.5 Elected Statewide Offices. SOURCE: Created by the author.

Under the conditions of splintered power, because there was no unified team, there was no universally accepted or created public policy. Each politician pursued his or her own interests and those of their constituencies. In other words, one-party politics in Texas was really no-party politics. Instead of vigorous debate and citizen involvement that characterize well-run democracies, confusion and apathy reigned in the midst of this lengthy, one-party dominance.[20] ***Conservative vs. Progressive Democratic Factions***

The transition to two-party politics in Texas changed this dysfunctional system, but that change occurred slowly and intermittently.[21] The decade of the 1920s was a bridge for Democrats between the reforms of the Progressive Era—such as child labor, workers' compensation, the eight-hour work day, regulating monopolies and railroads, safe food, drug, and housing standards, among many others, including, as mentioned earlier in this chapter, minimum wage and women's suffrage—and the economic collapse of the Great Depression. Southern Democrats, including Texas Democrats, shifted their goals for reform from social issues toward business and economic growth, government efficiency, and governmental support for educational and prison reform, as well as highway and industrial construction.[22]

Beginning in 1928, in the midst of a bitter feud between the warring factions of the Democratic Party about such issues as the legitimacy of the Ku Klux Klan and Prohibition, Texas occasionally voted for Republican presidential candidates. Still, the party held complete control of state politics and government. From the mid-1930s until the early 1950s, the Democratic Party experienced significant upheaval as a result of inter-party disputes between its conservative and liberal factions relating to the issues of oil and gas regulation, the severe economic impact of the Great Depression, the New Deal legislation ushered in by the election of Franklin Delano Roosevelt as president in 1933, and the prevention or limitation of African American voting rights.[23] Still, Democrats were staunchly loyal to the party even with divides over government programs and civil rights. These old school Democrats were known as **yellow dog Democrats**, so called because of the nineteenth century saying, "I'd vote for a yellow dog if he ran on the Democratic ticket."[24] A conservative **blue dog Democrat**, on the other hand, would become Republican.[25] It is widely believed that the Republican Party officially entered the modern era of state politics in the mid-1940s, while Democrats were fighting amongst themselves.[26]

No one anticipated that the Democratic Party would politically implode in the 1950s and, in the process, provide an almost forgotten Republican Party the opportunity to gain inroads to statewide and national political power. The Democrats three primary factions—conservatives (otherwise known as the Shivercrats, for Democratic governor Allan Shivers, who backed Republican Dwight Eisenhower for president), moderates (who backed the policies espoused by then Senator Lyndon B. Johnson), and liberals. who backed Adlai Stevenson, the Democratic nominee. These three cliques engaged in an "intraparty battle that featured mistrust, mudslinging, shifting alliances, and ultimately a deeper division within the party."[27]

In 1961, Republican John Tower cracked the Democratic monopoly at the state level by winning a special election for a U.S. Senate seat vacated by Vice President Lyndon B. Johnson.[28] Tower had campaigned for the popular Dwight Eisenhower in Texas and was supported by the former governor of the state, conservative Democrat Coke Stevenson (named for Governor Richard Coke mentioned earlier in the chapter). He campaigned heavily for "independent- thinking" in courting the conservative Democrat

vote.[29] Liberal Democrats refused to vote for Tower's opponent, William Blakley, another "Eisenhower Democrat" whom they found too conservative.[30] Tower won, and from 1964 until 1978, Republicans gradually won more local elections in Dallas and Houston and experienced slow, but growing success electing candidates to the federal and state House of Representatives and Senate.[31] However, conservative Democrats continued to dominate state politics well into the 1970s despite the electoral losses of some of their most well-known and respective candidates.[32]

In 1978, the state's first Republican governor in 104 years—William P. Clements—was elected, but he did not win reelection in 1982. Despite his loss for reelection, it was clear that the party has arrived and intended to stay as a critical player in the state's political landscape.[29] Experts rightfully contend that the party's reemergence was attributable to the vast number of moderate and conservative Democrats who abandoned their party loyalty to support conservative Republican candidates (**Figure 4.6**).[30]

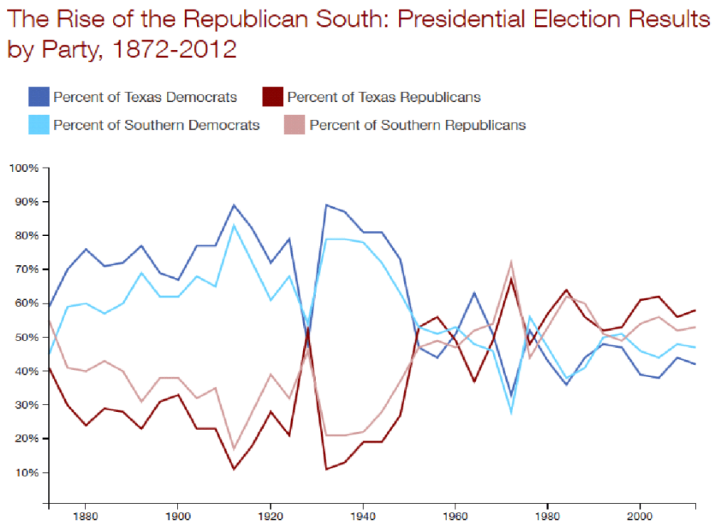


Figure 4.6 Graph of Election Results by Texas's Democratic and Republican Party vs. Southern Democrats and Republicans, from 1872-2012.

Republican Realignment and a New One-Party Regime

President Ronald Reagan's landslide reelection in 1984 finally broke the Democrats' stronghold on Texas. Dozens of Republican candidates gladly rode Reagan's political coattails to victory in state and local elections. Some of the local officeholders subsequently loss their reelection bids, but by then, Texas was no longer Democratic.[31] Any doubts about **Republican realignment**—a change in the partisan identification or affiliation resulting in a standing decision to vote for a given party—in Texas were removed in the 1986 election cycle. By then, the majority of "old school" conservative Democrats had either fled their party or retired from office..[32] As a result, aside from rare exceptions, the only Democrats left in the party were liberal.[33]

Former Governor William Clements was reelected by a wide margin in 1990, and his party enjoyed gains in all three branches of the state government and also in the federal government. The 1994 elections were truly a watershed for Republicans, who defeated an incumbent Democratic governor (Ann Richards), garnered the state's second U.S. Senate seat, pulled nearly even with Democrats in the number of state senators, and saw hundreds of local offices won by their candidates. In 1994 Republican George W. Bush won the governorship and since then *no* Democrat has won state office. Two years later, Republicans won the majority in the Texas Senate, the first time the party had been able to achieve this feat since Reconstruction. And in 1998, Republicans swept the statewide races.[34]

In 2003, Republicans gained additional seats in the Texas Senate and, for the first time in 130 years, a majority in the Texas House of Representatives.[34] By 2006, Texas could just barely be considered a two-party state. Every statewide elective official, including all eighteen members of the two highest courts, was a Republican, as were both U.S. senators and the majorities in both chambers of the Texas legislature. Texas has decisively voted for Republican presidential candidates since 1980. The last Democratic bastion—the party's slim majority in the state's delegation to the U.S. House of Representatives—fell as a result of the Republican Party's 2003 redistricting bill.[36]

Let's Have a Tea Party!

Tea and crumpets anyone? It sounds like something from *Alice in Wonderland*—tea with the Mad Hatter—but no, the **Tea Party** is a grassroots movement within the Republican Party by those who felt Republicans were not being Republican enough. Perhaps the Tea Party movement took hold within Texas because, lacking any real opposition from the Democratic Party, the Republican Party felt the need to create competition within itself. There are those whom The Tea Party labeled RINOS—Republicans In Name Only—whom they felt were not true enough to the party's conservative values and some in the party don't appreciate the label or the competition (**Figure 4.7)**. The intra-party divide occurred in the mid-2000s as backlash against the election in 2008 of Barack Obama to the presidency of the United States. Many were unhappy with the programs initiated by then-President Obama, particularly the Affordable Care Act, dubbed *Obamacare,* which required everyone to purchase medical insurance to support government subsidies for insurance companies that agreed to provide care. The price of the insurance was then scaled to the individual's income. The rollout of the program through State- based Exchanges was confusing and the various levels of insurance (bronze to gold) often had steep premium increases. The requirement to purchase insurance was repealed in 2017, though the program is still in effect.

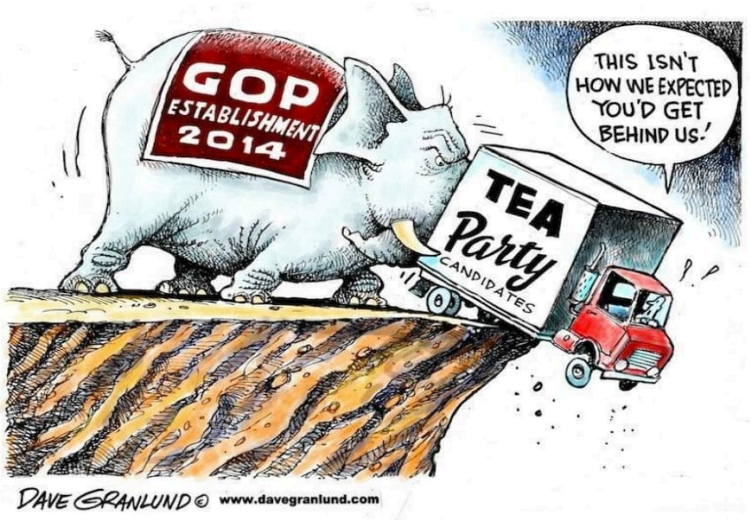


Figure 4.7 GOP Establishment vs. Tea Party, SOURCE: Cagle, Dave Granlund Archives,

The Tea Party name came from the Boston Tea Party, where colonists threw tea into Boston harbor to protest British taxes. The Tea Party actually began in Texas, created by U.S. House Republican Texan Dick Armey. Although the movement went on to gain national support, everything is bigger in Texas including Tea Party support. Republicans like U.S. Senator Ted Cruz and Lieutenant Governor Dan Patrick rode the wave of Tea Party support to victory. Since Obama left office, the Tea Party has evolved into the Freedom Caucus, which continues to wield tremendous support in the Republican Party, although not the support it once had. Many representatives and statewide officials are beholden to its support, including U.S. Representatives Louie Gohmert, and Representative Michael C. Burgess, Attorney General Ken Paxton, Senator Ted Cruz, and many others.

A Two-Party State? Demographic Changes and Shifting Voting Patterns

Until the 1980s, enough Texans had adopted a standing decision to vote for candidates of the Democratic Party, whose candidates could win most of the time. By the twenty-first century, however, enough Texans had changed their affiliations so that Republicans were normally victorious in statewide, although not necessarily in local, elections. Once a solidly Democratic state, Texas has aligned to be overwhelmingly Republican. If voting trends of the past two decades had continued, Texas might have become as much a one-party state deep into the twenty-first century as it was in the twentieth century, but with a different party in command. However, that now seems unlikely. The voting and survey date collected during the last two decades of the twentieth century indicate that Texas has experienced another realignment. Demographic changes and shifting voting patterns in the state has led to the reemergence of the Democratic Party in state legislative, local, and some judicial races.[37]

The resumption of two-party competition in Texas will undoubtedly prove beneficial for democracy in the state. In recent years, there has once again been robust debate between the two major parties on many issues important to citizens.

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19. Dautrich, et al., *American Government: Texas Edition*.

20. Dautrich, et al., *American Government: Texas Edition*.

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22. Young, “Democratic Party,” https://www.tshaonline.org/handbook/...mocratic-party.

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4.3: Welcome to the Party! Examining Party Organization

While individual Texans may be strongly connected to one political party or the other for years or even decades, the party organizations themselves are in a constant state of renewal. Political parties are organizations, but the way they are structured can differ. When they are well organized, they can function very effectively, but when they are not, it can lead to gridlock and difficulty in drafting clear policy. In Texas, political parties are organizationally weak.

Most states, including Texas, have political parties that are divided into a permanent party organization and a temporary party organization. The **permanent party organization** is a small, fixed organization that handles the routine business of a political party. consists of little more than a skeleton force of people who conduct the routine but essential business of the party. Because they main purpose of the party is to win elections, during election years more people are needed in order to succeed. Therefore, during election years the party but boost its activity through a temporary party organization with the goal to gain power. **A temporary party organization** is formed to mobilize the party's potential electorate and win an election. The temporary party organization focuses on elections. It tries to select appealing candidates who can win and tries to mobilize voters to support them[38] (**Figure 4.8**).



Figure 4.8 Temporary and Permanent Party Organization SOURCE: The Texas Politics Project, Party Organization in Texas.

In Texas's 254 counties, there are more than 6,000 precincts, each having from fifty to as many as 3,500 voters. Each voter is entitled to vote for the precinct chairperson and propose and vote on resolutions that establish party policy, but voter participation in party affairs is low. Normally, only a small fraction of those who vote in the primaries—who are themselves only a fraction of the total number of registered voters and a smaller fraction of citizens of voting age—participate in conventions or other party affairs.[39]

The main function of the precinct convention is to select delegates to the county convention, which is the next level of the temporary party organization. The main function of the county convention is to select delegates to the state convention. Both precinct and county conventions can be either short or long, peaceful or filled with conflict, productive of resolutions or not.[40]

The state convention is the highest-level part of the temporary party organization, meeting in June of even-numbered years. State conventions are generally more formal and more scripted, with thousands of delegates, featuring more speeches and less open debate.

The party platform for each party is drafted by a platform committee, but is sometimes discussed in floor debate, and can frequently be controversial. The parties' platform positions are good indications of the values and beliefs of the major party activities as groups, but—as most older Texans well know—they are not always reliable guides to the issue positions taken by individual candidates.[41]

Finally, in presidential election years, state conventions must choose a slate of electors to represent the state in the electoral college should that party's nominee receive a majority of the state's votes in the November election.

Participants in these conventions also elect members of a permanent party organization that will run the day-to-day operations of the party until it is recreated by the next series of conventions two years later.

There are permanent party officials at each level at which temporary party organizations exist. The precinct chair is elected by voters who participate in that party's primary election in that precinct. At the county level, all the precinct chairs in the county form the party's county executive committee. The county's party chair is elected by voters in the party primary election. Members of each party's state executive committee are elected by delegates at the state convention—one man and one woman from each of Texas's thirty-one senatorial districts. Delegates to the state convention also select the party chair and vice chair.

A list of the major activities performed at the State Convention follows in **Figure 4.9.**

Activities Performed at the State Convention

- Certifies to the secretary of state the party nominees for the general election in November.
- Writes the party platform.
- Selects the members of the SEC and names the Texas committeeman and committeewoman to the national party committee, similar to the party's selection of a chair and vice chair.
- During presidential years, selects the "at-large" delegates to the national party convention (who are not committed to supporting any particular candidate, as opposed to the "pledged" delegates who are sworn to support specific candidates.[41]

Figure 4.9 Activities Performed at the State Convention. SOURCE: Created by the author.

38. Dautrich, et al., *American Government: Texas Edition*.

39. Dautrich, et al., *American Government: Texas Edition*.

40. Dautrich, et al., *American Government: Texas Edition*.

41. Dautrich, et al., *American Government: Texas Edition*.

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4.4: Conclusion

Ideally, competitive party systems are characterized by a great deal of public dialogue between the parties. Emerging new groups of voters—African Americans, Latinos, and women, for example—and unique issues found receptive ears in one or more of the competing parties. In this way, these concerns became known throughout the political system. More citizens became active when there is a true two-party system, meaning either party might win an election, and voter turnouts were generally higher in this type of political environment. However, in one-party states, all of these factors were different, and Texas furnished a good historical example of these phenomenon.[42] At the national level, however, the United States settled into a pattern of two- party competition that has prevailed ever since.[43]

This chapter has covered the basics of how political parties have emerged as the engine behind democracy and how we currently have two parties—Democrats and Republicans—who represent particular ideologies. We have covered the following:

- Political parties are organizations with a specific set of values and beliefs that aim to gain control of government by winning elections so that they can influence policy.
- Political ideology is set of ideas, attitudes, or values about government and politics held by individuals.
- Economic liberals want government intervention in the economy; economic conservatives do not.
- Social liberals want the government to stay out of personal lives while social conservatives want the government to enforce traditional values.

- Republicans in Texas favor low government regulation of economy, friend of big business, oppose abortion and gay marriage, and oppose big social programs.
- Texas Democrats are more conservative than national Democrats - oppose implementing a state income tax or raising the sales tax but favor education spending and have moderate support for abortion.
- Third Parties have historically been an important part of our political system. Libertarians are the most significant Third Party in Texas today and support fiscal responsibility and social tolerance, opposing government intervention in both the economy and social issues.
- Party organizations are weak in Texas

Is the party over? Many have argued that the days of political parties are over. Robert Putnam in his book *Bowling Alone* talks about the decline in people joining groups.[44] But what does this have to do with political science you ask? Well, political parties are groups or organizations that people join. They are an essential part of democracy. The American system of government causes us to have a two-party system. While these parties change, and we can have Third Parties, we really have a winner-take-all two-party system. If we did not have two parties that both have a chance of winning office, would we still have a democracy? If you answer *no*, then think about this: if people are not joining groups or organizations as much anymore, does that mean that we have a decline in the importance or relevance of political parties? And if you answer *yes*, then does that mean that democracy is in decline?

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42. Dautrich, et al., *American Government: Texas Edition*.

43. David Williams, “Party Competition and Majority Rule: The History of U.S. Parties” (lecture notes), University of Texas at Austin.

44. Robert Putnam, *Bowling Alone* (New York: Simon & Schuster, 2000).

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4.5: Key Terms and Concepts

political parties –organizations with a specific set of values and beliefs that aim to gain control of government so that they can influence policy.

political ideology – set of ideas, attitudes, or values about government and politics held by individuals.

liberal – someone who believes in government involvement to equalize social inequalities and to help with issues like the environment.

conservative – someone who wants a limited government role, capitalism, and policies to promote economic growth.

partisanship – loyalty to a particular party.

two-party system – a party system where even if more parties are present only two have a realistic chance of winning.

Third Parties – A term used in American politics that refers to any party other than the 2 major parties, currently these are the republican and democrat party.

Libertarian – someone who wants limited government involvement in both the social and economic dimension in all aspects and values individual autonomy.

one-party state – a state where one political party is the only party affiliation of elected office in the state.

yellow dog Democrat – old school Democrat.

blue dog Democrat – conservative Democrat who became a Republican.

Republican realignment – a change in the partisan identification or affiliation resulting in a standing decision to vote for a given party—of its citizens.

Tea Party – a more conservative subset within the republican party.

permanent party organization –a small, fixed organization that handles the routine business of a political party.

temporary party organization – formed to mobilize the party's potential electorate and win an election.

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5: ELECTIONS AND POLITICAL PARTICIPATION IN TEXAS

Learning Objectives

After reading this chapter, you should be able to:

- Analyze both formal and informal historical barriers to voting and participation in Texas.
- Explain the current registration process and voting requirements in Texas.
- Discuss the factors that affect voter turnout and political participation in Texas.
- Evaluate the key elements of political campaigns, focusing specifically on how they are administered and financed.
- Describe the purpose of the different types of elections.

If I take a ballot selfie while casting my vote, am I breaking the law? (**Figure 5.1**)

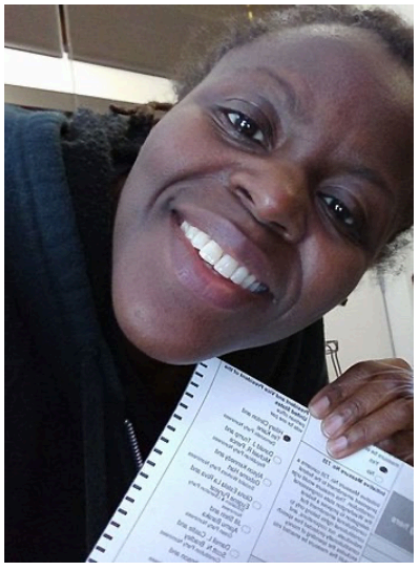


Figure 5.1 Charlene McBride of Seattle, Washington, posts a ballot selfie from the 2016 election. SOURCE: By Charlene McBride from Seattle, WA, US - IMAG3258.jpg, CC BY 2.0.

Well, who doesn't like to take a good selfie? But if you are thinking of taking a selfie in the voting booth in Texas, think again. Each state has its own laws regarding ballot selfies or even phones in the voting booth. In Texas, phones and other wireless communication devices are by law not allowed within 100 feet of a polling place. But what about a mail in ballot? Well, for those of you voting from home, there is nothing in Texas law that addresses photos and mail in ballots. So, if you are filling out a mail in ballot, get the lighting ready and say cheese!

5.1: The History of Voting in Texas

5.2: Voting in Texas Today

5.3: Voter Turnout and Political Participation- Are the Voting Winds Changing in Texas?

5.4: Barriers to Voting

5.5: Campaigns in Texas

5.6: Types of Elections

5.7: Conclusion

5.8: Critical Thinking Questions

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5.1: The History of Voting in Texas

Texas shares with many other states—especially with former Confederate states—a history of systematic disenfranchisement of Blacks and poor Whites. The systematic disenfranchisement was rooted in the Texas Constitutions which provided limited suffrage. The Texas Constitutions of 1836 and 1845 only gave the right to vote to White and Hispanic men, but not to African Americans, Native Americans, or women.

In the aftermath of the Civil War, Union troops occupied the Confederate states, and as a precondition for the removal of the occupying troops, the Union required these states to ratify the Thirteenth, Fourteenth, and Fifteenth Amendments.

> The Thirteenth Amendment (1865) abolished slavery.

The Fourteenth Amendment, Section I (1868) established the citizenship of those who had been enslaved:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.[1]

This was important because until citizenship was established, those who had been enslaved could not claim any of the rights protected by the U.S. Constitution. By granting citizenship to all people born in the United States, including those formerly enslaved, the Fourteenth Amendment guarantees all citizens "equal protection of the laws."[2]

Most of the laws concerning the right to vote developed under the guarantee of equal protection under the Fourteenth Amendment, even though the Fifteenth Amendment (1870) provides for the right to vote "regardless of race, color, or previous condition of servitude."[3] The Fifteenth Amendment does protect against discrimination based on race, but it does not actually guarantee the right to vote. It is the Fourteenth Amendment that has served as the basis for countless landmark Supreme Court decisions instrumental in the fight for equality and the civil and legal rights of Asian Americans (*United States v. Wong Kim Ark*, 1898), African Americans (*Brown v. Board of Education*, 1954), Hispanic Americans (*Hernandez v. Texas*, 1954), women (*Reed v. Reed,* 1971), LGBTQIA (*Obergefell v. Hodges*, 2014), Arab Americans (*Arab American Civil Rights League [ACRL] v. Trump*, 2017), and other minority groups.

The ratification of the Thirteenth, Fourteenth, and Fifteenth Amendments was not only required for the removal of troops but also for readmission to the Union. Many former Confederate states were angry at having been forced to ratify these Civil War amendments and sought other ways to disenfranchise those who were now free. With the end of Reconstruction in the 1870s, the nation politically abandoned uniform enforcement of the Civil War amendments. Union troops withdrew from the South and, although Blacks were still legally able to vote in 1870, they faced increasing resistance. Like many southern states, Texas legalized segregation through **Jim Crow** laws (**Figure 5.2**). These laws, designed to restrict or prevent voter participation by African Americans, replaced the **Black Codes** of 1866 that kept African Americans in inferior positions politically, economically, and socially. During Jim Crow, Texas utilized several methods for suppressing votes: literacy tests, the secret ballot, poll taxes, and the all-White primary.

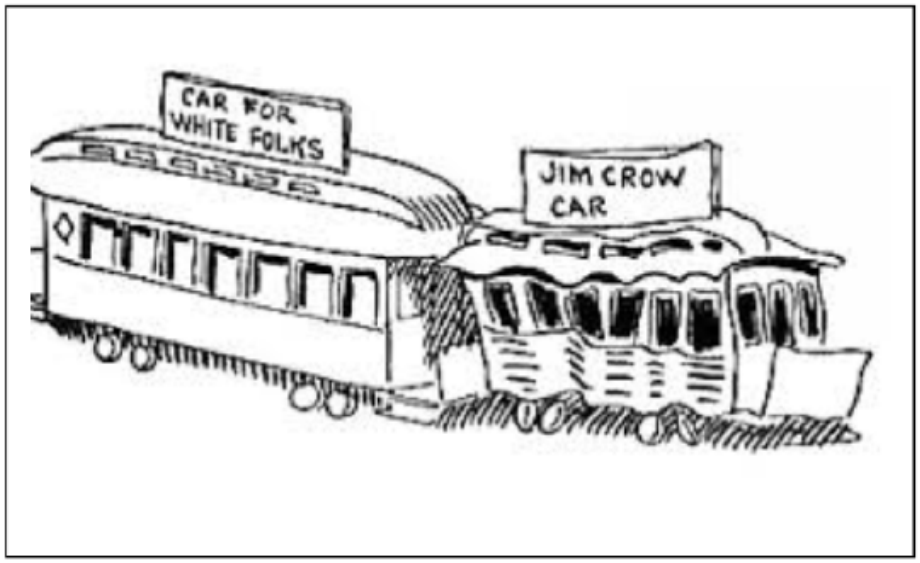
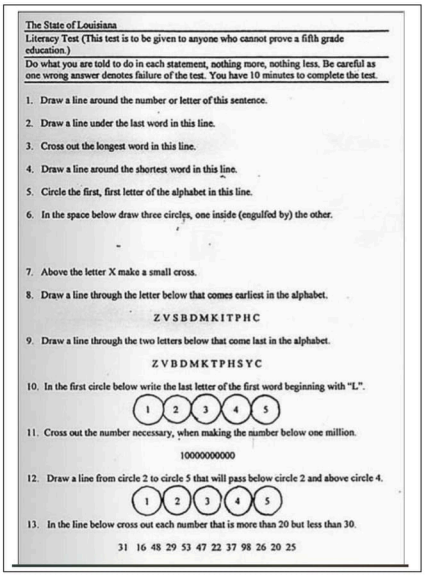


Figure 5.2 Jim Crow laws legalized the informal segregation that had been customary in the South. Separate cars for White and Black people had to be provided in public transportation, for example, and such segregation extended even to public drinking fountains and restrooms. Non-whites were given inferior facilities and treatment. SOURCE: 1904 caricature of "White" and "Jim Crow" rail cars by John T. McCutcheon.

Literacy Tests

Literacy tests were implemented in southern states as a way to block Blacks from voting (**Figure 5.3**). People who wanted to vote would have to illustrate that they were able to read and write English. This might not sound like a big deal, but it wasn't as easy as it sounds. The tests were designed to block African-Americans from voting so some literacy tests required prospective voters to answer a thirty question test in ten minutes and if someone answered incorrectly then that person failed. But what about Whites who couldn't read or pass the test. Well, there was a special set of rules for them. It was called the *grandfather clause*. The **grandfather clause** meant that people who had been able to vote prior to January 1, 1867, or their descendants, would be exempt from requirements like educational, property, or tax requirements for voting. This was a way for White people to circumvent the rules. The grandfather clause was a way to enfranchise White voters who would have been unable to vote based on factors like literacy tests. Although the Fifteenth Amendment made it so southern states couldn't pass laws saying Blacks cannot vote, they could pass laws that weren't based on race but would have the effect of helping poor Whites and preventing Blacks from voting. Grandfather clauses stayed in effect until 1915 when the Supreme Court ruled in *Guinn v. United State*s that they violated the Fifteenth Amendment. However, this did not affect the ability of southern states to use literacy tests as long as they did not grandfather anyone in. A point to remember is that these literacy tests were evaluated by White men who then decided if you passed or not. There was nothing that precluded them from simply saying White men passed and Black men did not. See if you can pass the literacy test used in Louisiana as recently as 1964. Would have had to have been grandfathered in?



The State of Louisiana

Literacy Test (This test is to be given to anyone who cannot prove a fifth grade education.)

Do what you are told to do in each statement, nothing more, nothing less. Be careful as one wrong answer denotes failure of the test. You have 10 minutes to complete the test.

1. Draw a line around the number or letter of this sentence.
2. Draw a line under the last word in this line.
3. Cross out the longest word in this line.
4. Draw a line around the shortest word in this line.
5. Circle the first, first letter of the alphabet in this line.
6. In the space below draw three circles, one inside (engulfed by) the other.
7. Above the letter X make a small cross.
8. Draw a line through the letter below that comes earliest in the alphabet.

Z V S B D M K I T P H C

9. Draw a line through the two letters below that come last in the alphabet.

Z V B D M K T P H S Y C

10. In the first circle below write the last letter of the first word beginning with "L".

(1) (2) (3) (4) (5)

11. Cross out the number necessary, when making the number below one million.

10000000000

12. Draw a line from circle 2 to circle 5 that will pass below circle 2 and above circle 4.

(1) (2) (3) (4) (5)

13. In the line below cross out each number that is more than 20 but less than 30.

31 16 48 29 53 47 22 37 98 26 20 25

Figure 5.3 Louisiana's 1964 literacy test. SOURCE: in Katie Serana, "Could You Pass this Voting Literacy Test Designed to Disenfranchise African Americans?" All That's Interesting/ATI, September 14, 2020.

The Secret Ballot

Until the mid-1880s, elections in the U.S. were public events, full of fanfare, electioneering, and celebration. Everyone knew who voted for whom, and party leaders could see which way the winds were blowing and pull out the stops to change the final result if needed, which could and often did involve corruption. The **secret ballot** is a voting method where the vote is cast anonymously. The secret ballot, also known as the *Australian ballot* because it was first passed in Australia before making its way to the U.S, was introduced to protect the secrecy of an individual's vote and to stop attempts to influence the voter by intimidation, blackmailing, and potential vote buying.

Prior to the implementation of the secret ballot, Texas relied on priming voters. Often the evening before elections the Democratic Party managers would host barbeques where food and alcohol would be served to the Black and Hispanic voters. The alcohol was carefully controlled because the managers wanted to ensure that the voters showed up at the polls the next day. The voters would be given already filled out party ballot in their hands. In South Texas, alien declarant laws were utilized under the Texas Constitution of 1876, which in Article 6 allows any "male person of foreign birth" simply to "declare his intentions to become a citizen" in order vote:

> Every male person of foreign birth [not subject to a list of disqualifications] who, at any time before an election, shall have declared his intentions to become a citizen of the United States, in accordance with the Federal naturalization laws, . . . shall also be deemed a qualified elector.[4]

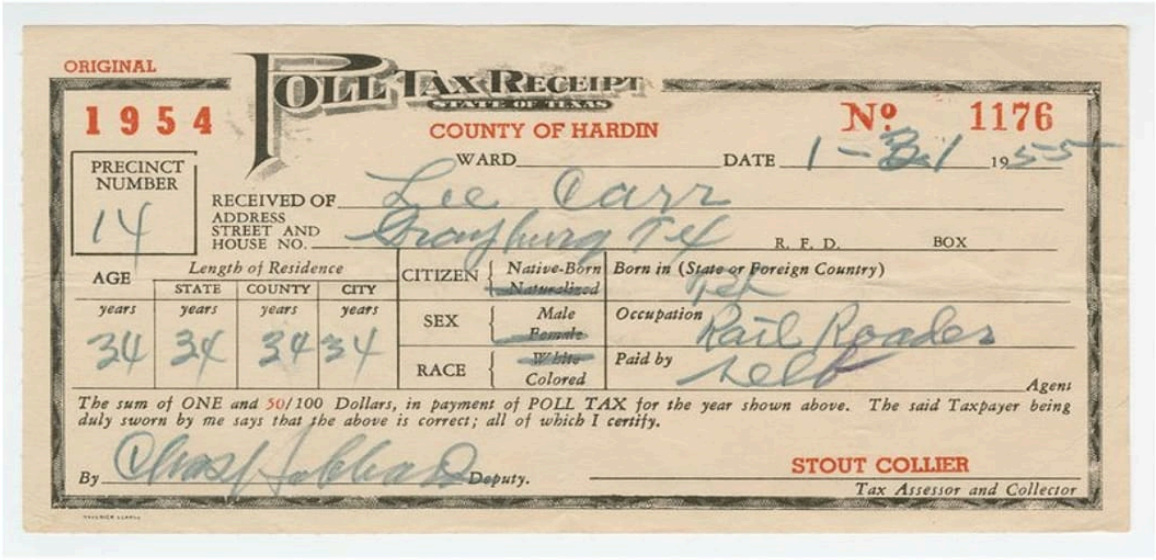
What this means is that someone could be brought from Mexico to Texas and in order to vote that person just had to declare their intention of becoming a citizen.

According to the study of racial voting rights prepared by historian Susan Cianci Salvatore for the National Historic Landmarks Program, "Prior to the secret ballot, voters went to the polls with printed ballots distributed by political parties with their candidates' names on them. The secret ballot system prohibited the use of this material and required voters to make their choices from the numerous names and offices printed on official ballots, a task that many of them could not perform."[5] Thus, the end result was that the secret ballot disenfranchised uneducated Americans, in a way that functioned similarly to literacy tests. This new method enabled Texas and many other southern states to legally block the majority of Black voters.

Poll Taxes

In January 1955 in Hardin County, Texas, Leo Carr had to pay $1.50 to vote. That receipt for Carr's **poll tax** now resides in the collections of the Smithsonian's National Museum of African American History and Culture (**Figure 5.4**). In today's dollars, Carr paid roughly thirteen dollars. "It's a day's wages," explains William Pretzer, the museum's senior history curator. "You're asking

someone to pay a day's wages in order to be able to vote."[6]


ORIGINAL

POLL TAX RECEIPT
STATE OF TEXAS

1954 No. 1176

COUNTY OF HARDIN

PRECINCT NUMBER 14

WARD _____ DATE 1-31 1955

RECEIVED OF Lee Carr

ADDRESS STREET AND HOUSE NO. Grayburg Tex R. F. D. _____ BOX _____

AGE	Length of Residence			CITIZEN	Native-Born / Naturalized	Born in (State or Foreign Country)
years	STATE years	COUNTY years	CITY years	SEX	Male / Female	Occupation Rail Roader
34	34	34	34	RACE	White / Colored	Paid by Self

Agent

The sum of ONE and 50/100 Dollars, in payment of POLL TAX for the year shown above. The said Taxpayer being duly sworn by me says that the above is correct; all of which I certify.

By _____ Deputy.

STOUT COLLIER
Tax Assessor and Collector

Figure 5.4 Receipt for Carr's "poll tax." SOURCE: National Museum of African American History and Culture, images of objects from the NMAAHC collection are open access through a CC0 license.

Poll taxes added a direct out-of-pocket transaction cost to voting by charging money to vote. Texas adopted a poll tax in 1902. It required that otherwise eligible voters pay between $1.50 and $1.75 to register to vote—a lot of money at the time, and a big barrier to the working classes and poor. Poll taxes, which disproportionately affected African Americans and Mexican Americans, were finally abolished for national elections by the Twenty-Fourth Amendment to the U.S. Constitution, adopted in 1964. This prevented states from applying poll taxes for presidential or congressional elections, but states were still able to implement poll taxes in state and local elections, and Texas used the poll tax for two more years after the Twenty-Fourth Amendment was passed. This changed in 1966, with the U.S. Supreme Court decision in *United States v. State of Texas* that poll taxes in Texas were unconstitutional and unfairly disenfranchised Blacks denying them their basic rights under the Due Process Clause of the Fourteenth Amendment.

The All-White Primary

Texas has a long history of being a one-party state meaning that in Texas, really only one party has a real chance of winning office. That means that the primary elections are where the real election is taking place. Texas was long controlled by the Democratic Party, and the Republican Party, associated as it was with the military occupation of Texas during Reconstruction, did not really stand a chance in Texas elections. Therefore, the Democratic Party primary was truly the deciding factor for who would take office. So, voting in that primary election or preventing people from voting in it was key.

Texas prohibited Blacks from voting in Democratic primary elections. The Supreme Court case *Nixon v. Herndon* (1927) changed this (**Figure 5.5**); well, sort of. The Supreme Court ruled this law violated the Equal Protection Clause of the Fourteenth Amendment. So, the Democratic Party worked around this ruling. They now continued to block Black votes by having the party's executive committee prevent Blacks from voting in the Democratic
primaries. The Supreme Court decision in *Nixon v. Condon* (1932) said this was illegal because the party's executive committee was formed by the legislature. So, the Texas Democratic Party got more creative. They restricted their membership to only Whites.



Figure 5.5 Beto tweets about a landmark Supreme Court case *Nixon v. Herndon*. The ruling in *Nixon v. Herndon* was the first step in ending all-White primaries in Texas. SOURCE: Beto O'Rourke (@BetoORourke), July 22, 2019, Twitter.

The ability to prevent Blacks from voting in the Democratic primary was actually upheld by the Supreme Court in the case *Grovey v. Townsend* (1935). In that case, a Black Houston resident, R. R. Grovey, sued the country clerk for refusing to give him a ballot in the Democratic primary election. In Texas, the Democratic Party functioned like a private club whose membership was restricted. It was based on this idea of the party as a private club that the Supreme Court based their decision. **All-White primaries** were not declared unconstitutional until *Grovey v. Townsend* was overturned in the case *Smith v. Allwright* (1944) stating that all-White primaries violated the Fifteenth Amendment. *Smith v. Allwright* was a landmark Supreme Court case because since 1923 the Democratic Party in Texas required all voters in their primary to be White this was because by law the state party was allowed to make its own rules. However, Lonnie E. Smith, a Black citizen of Harris County challenged it by suing the Harris County election official S. S. Allwright for the right to vote in the primary. On April 3, 1944, the Court declared the state law to be unconstitutional. The Court said that by only allowing Whites to participate in the primary election that Smith was being denied equal protection under the law which was in violation of the Fourteenth Amendment.

Hernandez v. Texas

1954 was a big year for landmark Supreme Court cases, the most famous of which was *Brown v. Board of Education*. With that case, the segregation that was enshrined by Jim Crow laws was overruled, determining that separate schools for Blacks and Whites unconstitutional. But there was a big case that hit close to home that year. It was the year when Texas's long history of discriminatory practices was challenged. The fight for equal treatment of Hispanics was brought to national forefront with the Supreme Court case *Hernandez v. Texas* (1954). Prior to this case Mexican Americans faced overt discrimination in Texas. Meaning that Mexican Americans could not go to White schools, eat with Whites, live in the same neighborhoods as Whites, use the same restrooms as Whites, or even be buried in the same cemetery (**Figure 5.6)**. So, does that mean Mexican Americans were classified the same way as African Americans? No, Mexican Americans were actually legally classified as White, but the Hernandez case would show how this legal classification was actually used to discriminate against Mexican Americans.



Figure 5.6 During Jim Crow, restaurants not only discriminated against African Americans but also posted *"No Mexicans" signs that enforced the racial discrimination. SOURCE: the Russell Lee Photography Collection, courtesy of the Dolph Briscoe Center for American History, The University of Texas at Austin. This photo was part of the* Life and Death on the Border 1910-1920 *exhibition, organized by the Bullock Texas State History Museum.*

Pete Hernandez was enjoying a drink in a bar when Joe Espinoza approached him and insulted him. Pete went home and returned with a gun and shot Joe. Pete Hernandez was found guilty of murder by an all Anglo jury in Jackson County, Texas, and sentenced to life in prison. If all Americans are guaranteed a fair trial by a jury of their peers, did he get a fair trial? In Jackson County where he was tried, no one of Mexican ancestry had served on a jury in the past twenty-five years. If at any time a Mexican American had served on a jury where a White person was on trial it might have been considered fair, but since that had never happened it seemed clear that Pete had not had a fair trial by a jury of his peers. Ironically, in the very Texas courthouse where the judge determined that there was no discrimination in the case of Pete Hernandez, the representing attorneys who were of Mexican heritage themselves could not use the White bathroom. In that very courthouse there was a bathroom for White men and one for colored men that said *Hombres aqui* (Men Here).

Gustavo "Gus" Garcia, a Mexican American civil rights lawyer, represented Pete in what would be the first Mexican American case in front of the Supreme Court. Gus Garcia was well spoken and brilliantly argued his case, that Mexican Americans were "a separate class, distinct from'whites'"[7] by which Garcia meant that Mexican Americans were indeed a class apart, more than either Black or White, and therefore an all-Anglo (White) jury did not constitute the jury of your peers that is guaranteed by the U.S. Constitution, and the Supreme Court delivered a unanimous decision that Mexican Americans were entitled to protection under the Fourteenth Amendment. Pete Hernandez received a new trial by a jury of his peers where he was convicted of murdering Joe Espinoza. However, the case was not about his guilt or innocence, but instead about getting a fair trial. This case, like *Brown v. Board of Education* also in 1954, paved the way for change and provided the first step towards equal rights.

The Voting Rights Act of 1965

The Voting Rights Act of 1965 was an important piece of legislation during the administration of President Lyndon Baines Johnson. Its aim was to protect minorities but particularly Blacks from the voting barriers that still existed in many southern states, including Texas. States that had a history of discriminatory practices when it came to voting were now required to get preclearance for any electoral changes. Preclearance included a process known as *redistricting*. While the number of representative each state sends to the U.S. Congress is determined by the national census, conducted every ten years, in Texas the districts that these congress people represent are drawn by the state legislature. **Redistricting** is the drawing of geographical boundaries to proportionally distribute representation by population.

When these geographical boundaries are drawn in a biased way to favor one political party over another it is called **gerrymandering**. Gerrymandering for political party dominance is not illegal as long as it is not done to discriminate by race. Such partisan gerrymandering in favor of Republican districts began in earnest in 2003 when Republicans gained control of both the state legislature as well as the governor's office. Republicans claimed districts had been gerrymandered in favor of Democrats

and now it was their turn. The Democratic representative to the U.S. Congress from Fort Worth, Marc Veasey, puts it this way, Texas has "created a system in which the elected officials are choosing their constituents, not the other way around."[8]

In the Supreme Court case *Shelby County v. Holder* (2013) a key portion of the Voting Rights Act of 1965 was struck down. In that case, preclearance of changes in voting laws for those states with a history of voter suppression was invalidated. In his announcement of the Supreme Court's reason for removing the preclearance condition of the Voting Rights Act of 1965, Chief Justice John Roberts explained that it was based on "decades-old data related to decades-old problems, rather than current data related to current needs."[9] He pointed to the fact that now "voting tests were abolished, disparities of voter registration and voter turnout due to race were erased, and African Americans attained political office in record numbers."[10] Chief Justice Roberts goes on to clarify that, "Our decision in no way affects the permanent, nationwide ban on racial discrimination in voting . . . [but rather reflects that] Our country has changed, and while any racial discrimination is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions."[11] This decision allowed Texas to change its voting laws without approval from the federal government as long as new voting laws do not disenfranchise voters based on race. Since the 2013 ruling, Texas has installed the most restrictive voting requirements of all of the states, including strict voter identification laws, strict vote-by-mail laws, and a reduction in both the number of polling places and drop-off points for vote-by-mail ballots.[12]

Girls Just Want to Have Fundamental Rights!

Ok, so you've read a lot about men and voting but what about women (**Figure 5.7**)? Well, women got the right to vote with the ratification of the Nineteenth Amendment on August 18, 1920. Remember that even after congress passed the Nineteenth Amendment, thirty-six states had to ratify it for it to become law. This was one small step in the fight for women's equality. For a long time, the popular view was that a women's place was in the home. Married women could not own property or really anything; it all belonged to her husband. And ladies, if you worked, well, that money wasn't yours; it belonged to your husband. The fight for women's suffrage, meaning the right to vote, really gained national prominence in July 1848 when a group of 300 women met in Seneca Falls, New York.



Figure 5.7 Protest Sign from the Women's March in Denver, 2017. SOURCE: History Colorado, Online Collection.

In Texas, amending the Texas Constitution to enfranchise women was considered during the state Constitutional Conventions in 1868-69 and 1875; however, it was rejected by the delegates both times. The fight did not end there. The fight both for and against suffrage amped up in the 1910s. In 1918 the women of Texas won the right to vote but only in primary elections not in the general elections (**Figure 5.8**). On June 4, 1919, congress passed the Nineteenth Amendment. On June 23, 1919, the Texas legislature met in a special session and on June 28, 1919, Texas ratified the Nineteenth Amendment making it the first southern state to do so. It took until August of 1920 for the amendment to be ratified by thirty-six states making it officially part of the U.S. Constitution.



Figure 5.8 Established in 1886, Fair Park in downtown Dallas is the location of the Texas State Fair. What makes Fair Park so special is that in 1893, the fair featured a woman's congress comprised of more than 300 women and organized by suffragist Dr. Ellen Lawson Dabbs, secretary of the Texas Equal Rights Association. The fair continued to promote the women's suffrage movement by hosting a Suffrage Day during 1913-1917. On this day, the suffragists gathered to promote voting rights for women! This park is now a National Historic Landmark.

Hispanic Voices The fight for women's suffrage was not just fought by non-Hispanic White women; it was a fight that crossed cultural and racial bounds. In 1911 Mexican American journalist, Jovita Idár, championed the cause of Mexican Americans. She wrote articles for her family's Spanish language newspaper, *La Crónica*. She called on working women to join the fight for the vote, pointing to recently enfranchised women in California as a model. "Working women . . . proudly raise your chins and face the fight,"[13] she implored. "The time of your degradation has passed."[14] That same year, and again in 1913, resolutions to amend the Texas Constitution to enfranchise women were introduced in the Texas legislature and were defeated. ***Black Voices*** You often hear about the White women that fought for the right to vote, but what about Black women? There were many Black suffragists too. Many of the women who were fighting against racial oppression and slavery as abolitionists were also fighting for civil rights, namely the right to vote. Mary Ann Shadd Cary was one of these heroes. She was born in Wilmington, Delaware, and had twelve siblings! She helped fugitive slaves and was the first Black women to edit a newspaper. She became a teacher and not only taught but established schools for Black children in several states as well as Canada. She was also the first Black female law student at Howard University and earned her law degree there. She went on to fight for all women and their right to vote. As a suffragist, she testified along with Susan B. Anthony and Elizabeth Cady Stanton before the Judiciary Committee of the House of Representatives. Fannie Barrier Williams, Charlotte Forten Grimke, Mary Church Terrell, Septima Poinsette Clark, Ida B. Wells-Barnett, Nannie Helen Burroughs, and Frances Ellen Watkins Harper were all Black women who fought for equality and were instrumental suffragists in the fight for the Nineteenth Amendment.

However, the Nineteenth Amendment did not really guarantee the right to vote to Black women here in Texas because things like the poll tax, literacy tests, the grandfather clause, and all-White primaries prevented Black women from participating. In addition, the National Women's Party did not include Black Women as a focus of the suffrage movement. In her book on *African American Women in the Struggle for the Vote, 1850-1920*, Rosalyn Terborg-Penn writes:

When the African American women suffragists sought assistance from the National Woman's Party, the party's leadership position was that, since Black women were discriminated against in the same ways as Black men, their problems were not women's rights issues, but race issues. Therefore, the NWP felt no obligation to defend the right of African American women as voters.[15]

Nevertheless, women like Lulu White, a native Texan, devoted her life to fighting for the right to vote, equal pay for equal work, and desegregation. White worked tirelessly for the National Association for the Advancement of Colored People (NAACP) and worked her way to becoming the full-time executive secretary of the Houston branch, a first for a woman in the South. This suffragist fought alongside the NAACP to eliminate the all-White primary. The civil rights attorney at the NAACP, Thurgood Marshall, successfully argued the Houston case against the all-White primary in front of the Supreme Court in the landmark case discussed previously in this chapter, *Smith v. Allwright*. Thurgood Marshall would go on to become the first African American appointed to the U.S. Supreme Court.

1. U.S. Const. amend XIV, § 1, https://constitutioncenter.org/inter.../amendment-xiv.
2. U.S. Const. amend. XIV, § 1, https://constitutioncenter.org/inter.../amendment-xiv.
3. U.S. Const. amend. XV, § 1, https://constitutioncenter.org/inter...t/amendment-xv.
4. Tex. Const. art. VI, § 2, https://tarlton.law.utexas.edu/const...cle-6-suffrage.
5. Susan Cianci Salvatore, "Civil Rights in America: Racial Voting Rights," National Parks Service, revised 2009, https://www.nps.gov/subjects/telling...tingRights.pdf.
6. William Pretzer, quoted in Allison Keyes, "Recalling an Era When the Color of Your Skin Meant You Paid to Vote," Smithsonian Magazine, Mar. 18, 2016, "https://www.smithsonianmag.com/smith...ote-180958469/.
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8. Eric Griffey, "A Brief History of Texas Gerrymandering," Spectrum News 1, Oct. 14. 2020, https://spectrumlocalnews.com/tx/san...errymandering-.
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10. *Shelby County v. Holder*, 570 U.S. 529 (2013), Opinion of the Court, p. 20, https://www.supremecourt.gov/opinion...12-96_6k47.pdf.
11. *Shelby County v. Holder*, 570 U.S. 529 (2013), Opinion of the Court, p. 24, https://www.supremecourt.gov/opinion...12-96_6k47.pdf.
12. " How Hard Is It to Vote in Your State?" NIU Newsroom, Northern Illinois University, Oct.13, 2020, https://newsroom.niu.edu/2020/10/13/...in-your-state/; "Voting Laws Roundup: March 2021," Apr. 1, 2021, Brennan Center, https://www.brennancenter.org/our-wo...roundup-march- 2021.
13. Jovita Idár, quoted in "Texas and the Nineteenth Amendment," National Parks Service, https://www.nps.gov/articles/texas-w...-s-history.htm.
14. Idár, quoted in "Texas and the Nineteenth Amendment," https://www.nps.gov/articles/texas-w...-s-history.htm.
15. Rosalyn Terborg-Penn, *African American Women in the Struggle for the Vote, 1850-1920* (Bloomington, IN: University of Indiana Press, 1998), quoted in Jen Rice, "How Texas Prevented Black Women From Voting Decades After the 19th Amendment," KHUT TV 8, June 28, 2019, https://www.houstonpublicmedia.org/a...right-to-vote/.

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5.2: Voting in Texas Today

In order to be eligible to vote in the presidential election in the United States, a person must be a citizen, resident, and eighteen years old. But additional rules and requirements are left to each state to decide. But some states make it very easy for people to vote, and some—like Texas—do not.

Wait, I'm 17, Can I Vote?

To vote in Texas you must be at least seventeen years and ten months of age when you put in your voting application, and it has to be postmarked or received by the county thirty days before the election. Some states are pushing this further to allow even sixteen-year-olds to vote.[16] One argument frequently cited against allowing seventeen-year-olds, much less sixteen-year-olds, to vote is that at seventeen you are not mature enough to vote. What do you think? Many seventeen-year-olds work and help support their families. At seventeen you are old enough to join the military with your parent's permission. What if you turn eighteen in the middle of an election year? You can vote in the November election, but not in the March primary in which the candidates are chosen. So, is this argument based in partisanship?

So, Who Can Vote in Texas?

To be eligible to register to vote in Texas, the following qualifications must be met:

- You are a United States citizen;
- You are a resident of the county where you submit the application;
- You are at least seventeen years and ten months old, and you are eighteen years of age on Election Day.

- You are not a convicted felon (you may be eligible to vote if you have completed your sentence, probation, and parole); and
- You have not been declared by a court exercising probate jurisdiction to be either totally mentally incapacitated or partially mentally incapacitated without the right to vote.[17]

So, How Does Voting Work?

Before most voters are allowed to cast a ballot, they must register to vote in their state. This process may be as simple as checking a box on a driver's license application—known as the **motor-voter law**—or as difficult as filling out a long form with complicated questions. **Voter registration** allows governments to determine which citizens are allowed to vote. Need to register to vote? You can fill out an application online or request to have an application mailed to you by calling the Texas Secretary of State's office toll-free at 1.800. 252.VOTE (8683).

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16. Jonathan Bernstein, "The 16 Year Old Vote Is Worth Taking Seriously," Bloomberg Opinion, Mar. 4, 2021, https://www.bloomberg.com/opinion/ar...e-it-seriously.
17. "Register to Vote," VoteTexas.Gov, powered by the Texas Secretary of State, https://www.votetexas.gov/register/index.html.

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5.3: Voter Turnout and Political Participation- Are the Voting Winds Changing in Texas?

Texas has in the past been notorious for low voter turnout, even for national elections. In the 2012 primary, only four percent of Democrats and eight percent of Republicans turned out to vote.[18] The voter turnout rate was 11.6 percent in the 2014 primary election.[19] In the 2018 primary, 2.6 million people voted: 1.5 million Republicans and 1.1 million Democrats, yielding a seventeen percent turnout in the 2018 primary election.[20] There are many reasons for this. For example, a study completed by the National Commission on Voting Rights in September 2015 found that state registration laws can either raise or reduce voter turnout rates, especially among citizens who are young or whose income falls below the poverty line.[21] The study also found that states with a less complex voting system yielded higher voter registration.[22] Although the government says it wants to increase voter turnout, the registration process and state voting laws may be placing barriers that prevent various groups of citizens from participating in the electoral process.

However, voter registration is on the rise. Headed into the 2020 primary elections, voter registration had increased by 417,941 with 16,211,198 registered voters. By the 2020 general election voter registration was at 16,955,519. That means that there were 1,162,262 more registered voters in 2020 that 2018. This increase in voter registration has been attributed by some to a massive efforts by political parties to get people registered. However, this increase could also be simply a reflection of the increase in Texas population. Although there was an increase of 12.3 percent of registered voters, this number is not really that unusual. From 1992 to 1996 there was a 24.9 percent increase and from 1980-1984 there was a nineteen percent increase.[23] You can see from the graph in **Figure 5.9** that voter registration can be at least partially explained by population increases in Texas.

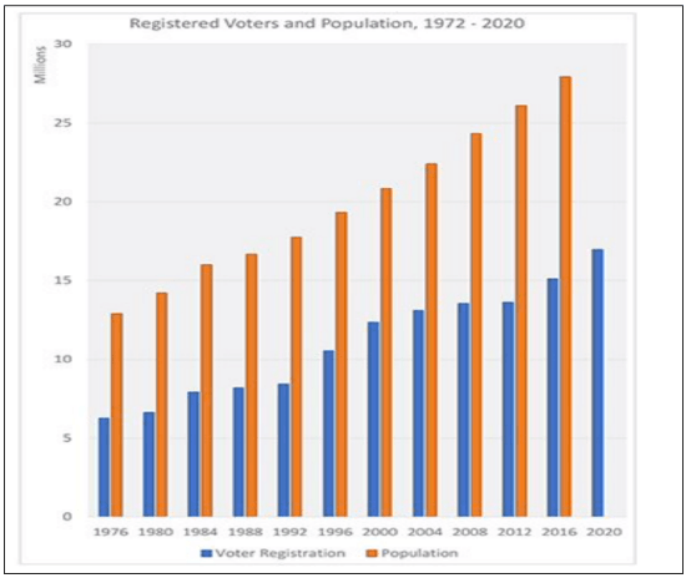


Figure 5.9 Registered Voters and Population, 1972-2000.

Much of this growth was concentrated in the big cities of Houston, Dallas-Fort Worth, San Antonio and Austin, although border counties such as El Paso County and areas along the Permian Basin also saw increases in population. **Table 5.1** offers a comparison of population and registration on a county-by-county basis.

Table 5.1 Change in Registration and Voter Population

County	Pop., 2016-2019 All Ages	Pop., 2016-2019 Age 18+	Registration 2016-2020
Hays	12.5%	13.1%	26%
Williamson	11.9%	13.7%	25.6%
Comal	16.3%	16.8%	25.4%
Rockwall	12.3%	13.5%	23.8%
Parker	10.8%	10.8%	22%
Denton	9.8%	11.5%	21.6%
Kaufman	15.5%	15.1%	21.3%
Collin	9.6%	11.2%	20.7%
Fort Bend	9.1%	9.9%	19.4%
Guadalupe	8%	9.5%	18.8%
Montgomery	9.4%	10.3%	18.7%
Travis	5.6%	7.2%	17.9%
Ellis	9.8%	10.4%	17.6%
Hood	9%	9.2%	17.1%
Wise	8.5%	8.9%	16.8%
Bell	6.4%	7%	15.8%
Hidalgo	2.3%	4.3%	15.6%
Bastrop	7.4%	7.8%	15.4%
Johnson	8%	8.2%	15.1%
Brazos	4.3%	4.3%	14.4%
Brazoria	6%	6.8%	14.1%
El Paso	0.5%	2%	14%
Bexar	3.9%	4.9%	13.8%
Hunt	7.3%	7.4%	13.3%
Midland	7.9%	7.6%	13.1%
Waller	10.4%	10.6%	12.8%
Tarrant	3.9%	5%	12.5%
Wilson	5.9%	7%	12.1%
Webb	1.6%	3.6%	11.8%
Nacogdoches	-0.5%	-0.1%	11.6%

Figure 5.10 shows.

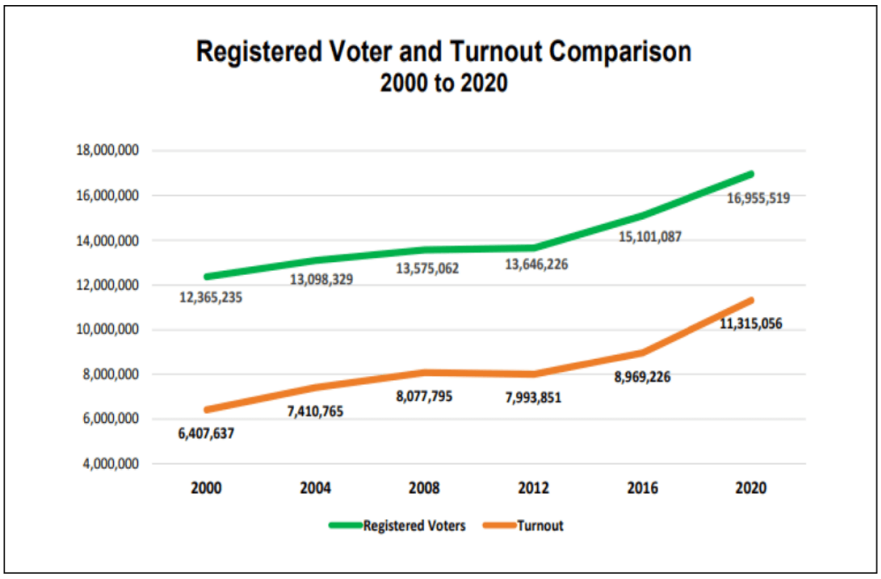


Figure 5.10 Registered Voter and Turnout Comparison, 2000-2020.

So, registration numbers went up in Texas and that led to much discussion that Texas might turn blue. Discussion was also fueled by the 2018 candidacy for U.S. Senate of Robert Francis O'Rourke, better known as Beto. Beto served from 2013-2019 in Texas's Sixteenth Congressional District for El Paso in the United States House of Representatives. A Democrat winning a statewide office seemed unlikely in a staunchly Republican state like Texas, or at least it did until Beto O'Rourke. Because Beto was such a strong candidate, Democrats showed up to the polls in record numbers. Republicans got scared and realized that the Republican who held the seat, Senator Ted Cruz, could actually lose, so Republicans also showed up to the polls in

record numbers especially for a midterm election where turnout is usually low. Ted Cruz kept his Senate seat, but the race ended up being the closest in the past forty years! Beto lost the race by only 2.5 percentage points. Does 2018 voter turnout mean that Texans are going to continue to show up and vote or was it an anomaly? Were Texans simply responding to the specific candidates who were running?

However, a blue Texas did not happen. In 2020, not much changed. According to Derek Ryan 2020 Post Election Report, here's what we saw from the 2020 election:

- The Republican presidential candidate won Texas for the eleventh consecutive presidential election;
- Republicans won every statewide race on the ballot for the thirteenth consecutive election;

- Republicans held on to all of their congressional seats;
- Republicans maintained their majority in the Texas House by a margin of eighty-three to sixty-seven.[24]

While the Republicans had much to celebrate, there were also several victories for Democrats:

- Democrats held the two congressional seats they won from the Republicans in 2018;
- Democrats won back a seat in the Texas Senate;
- Democrats won all but one of the twelve seats in the Texas House they won from the Republicans in 2018;
- Democrats won seven seats on Court of Appeals benches and several other District Judge positions.[25]

Ultimately, it's not just voter registration that's important but who is participating in the electoral process through voting.

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18. Ross Ramsey, "Elections Behind and Ahead," *Texas Weekly*, Aug. 24, 2012, http://www.texastribune.org/texas-we...ind-and-ahead/.

19. Ramsey, "Elections," http://www.texastribune.org/texas-we...ind-and-ahead/.

20. "Turnout and Voter Registration Figures (1970-current)," Texas Secretary of State, Ruth R. Hughs, https://www.sos.state.tx.us/election...al/70-92.shtml.

21. Stanley Augustin, "New Report Released by National Commission on Voting Rights: More Work Needed to Improve Registration and Voting in the U.S.," Press Release, Sept. 22, 2015, Lawyers Committee for Civil Rights Under Law, https://lawyerscommittee.org/new-rep...ng-in-the-u-s/.

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25. Ryan Data & Research, "2020 Post Election Report," https://mailchi.mp/ryandata/2020_gen...6?e=e7bad3d9fe.

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5.4: Barriers to Voting

The year 2020 impacted voter registration in a whole new way. It's not often that a pandemic comes along and prevents voter registration, but as we see from the follow chart, when COVID 19 was peaking registration went down. You can see in **Figure 5.11** that the months of April and May when COVID was at its height registration was at its lowest. Obviously during the months when Texas was in a shut down, in person registration was also down. It became a race by the parties to contact potential voters though email, text, and phone calls in order to get them registered.

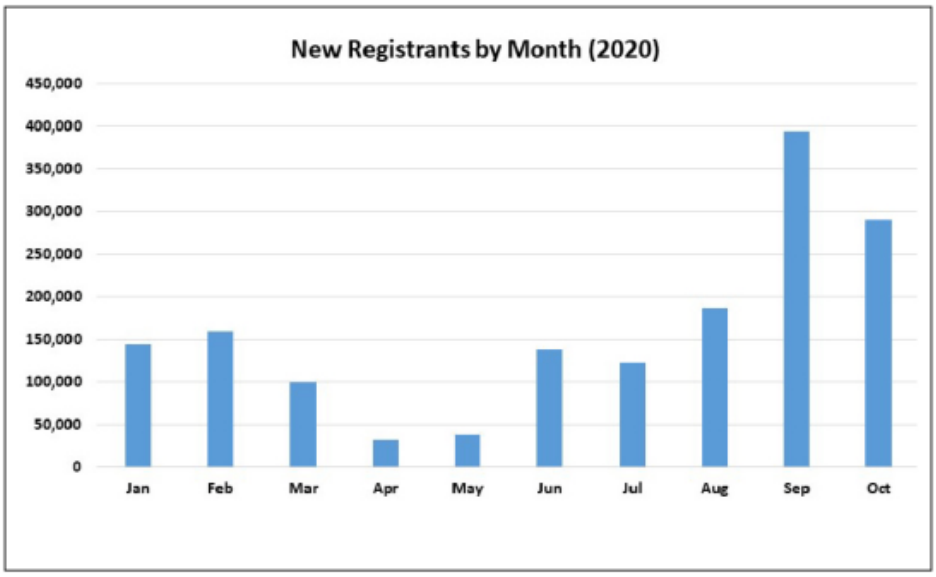


Figure 5.11 New Registrants by Month (2020) SOURCE: Ryan Data and Research.

While the pandemic had an impact, anytime accessibility is limited or it is harder for people to vote, you discourage registration and voting. Barriers to voter turnout could be how long before the actual election that you must register to vote. States may require registration to take place as much as thirty days before voting, or they may allow same-day registration. Fourteen states and the District of Columbia now allow voters to register the day of the election if they have proof of residency, such as a driver's license or utility bill. However, Texas requires registration forms to be mailed thirty days before an election. This means that requiring people to mail the ballot thirty days in advance can have a negative effect on voter turnout.

Other factors include socioeconomic status, obstacles to voting by mail, voter fatigue, and Republican dominance.

Socioeconomic Factors

Socioeconomic factors also play a role in low voter turnout. It's much easier to vote if you are a salaried employee. If you are paid by the hour, however, then time is money. Voting takes time. Voters must drive from their place of employment to the polls and stand in what is often a very long line to cast a ballot and then drive back to work. So not only do many prospective voters not have time to vote but they cannot sacrifice the work (money).

Another factor in Texas is that many Texans who are eligible to vote do not speak English. Political Parties have been trying for a long time to mobilize the Hispanic voter, but they still have low numbers at the polls. Although Texas has bilingual voting places (**Figure 5.12)**, Hispanics tend to feel less empowered and often are surrounded by other nonvoters, which reinforces the pattern of nonvoting. Also, many poor or working-class Hispanics are busy focusing on their immediate needs. As Juan Flores, a twenty-seven-year-old nonvoter says, "Being poor really doesn't lend itself to fixing major problems."[26]



Figure 5.12 Vote here sign. SOURCE: Jay Phagan/ Wikimedia Commons.

Is Texas's Controversial Voter ID Law a Modern-Day Poll Tax?

Texas has one of the strictest **voter ID laws** out of all the states (**Figure 5.13**). In Texas you are supposed to show a photo ID to vote. Voters may use one of seven (7) forms of photo ID:

- Texas Driver license;
- Texas Election Identification Certificate (EIC);
- Texas Personal Identification Card issued by DPS;
- Texas handgun license;
- U.S. military identification card containing the person's photograph;
- U.S. citizenship certificate containing the person's photograph;
- U.S. passport.

For voters aged eighteen to sixty-nine, IDs may be expired up to four years. A person seventy years of age or older may use a form of ID that has expired more than four years ago.

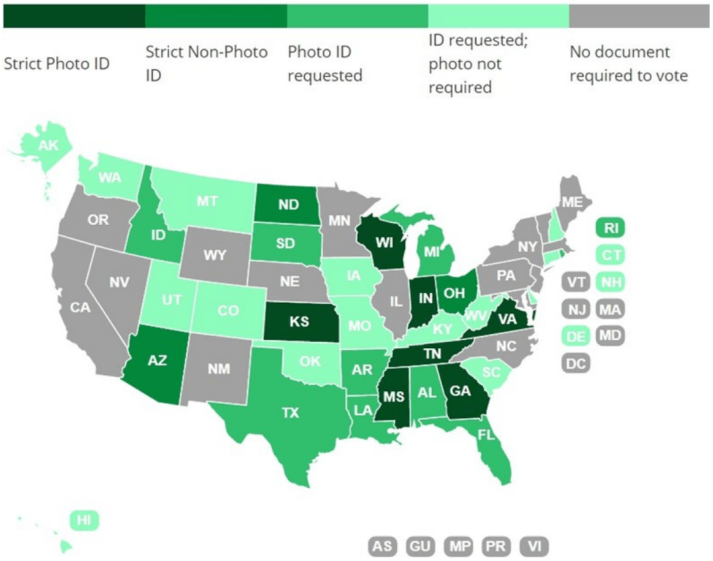


Figure 5.13 Voter Identification Laws in 2019. A map showing the status of voter ID laws around the United States, as of 2019. (North Carolina's voter ID was supposed to go into effect in 2020, but on Dec. 31, 2019, a federal judge issued a temporary injunction blocking it at least until a lawsuit could go forward. National Conference of State Legislatures.) SOURCE: The News & Observer Fact-Checking Project.

If you cannot obtain one of the seven forms of approved photo IDs, you still have the ability to vote. New procedures allow registered voters who are not able to obtain an acceptable photo ID to sign a simple, one-page form called the Reasonable Impediment Declaration and present one of the following documents to vote a regular ballot (**Figure 5.14**):

- valid voter registration certificate (card);
- certified birth certificate;
- current utility bill;
- bank statement;
- government check;
- paycheck;
- any other government document with the individual's name and address.

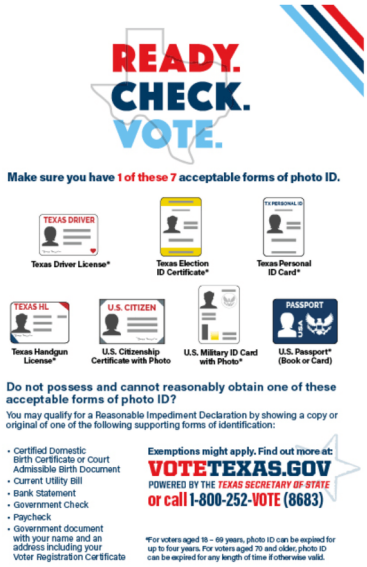


Figure 5.14 What it takes to vote in Texas. Although you do have the ability to vote even if you don't have one of the approved forms of photo IDs, many people are unaware of it so they don't show up to vote. SOURCE: VoteTexas.Gov, powered by the Texas secretary of state.

Minorities and the poor are most effected by the voter ID laws. Democrats argue that these laws disproportionally affect minorities (**Figure 5.15**). These voter ID laws have been called a "poll tax" because individuals have to pay for government identification in order to be able to participate.[27] In 2014, 600,000 voters of 13.6 million registered voters (about 4.4 percent) in Texas did not have the proper form of ID to vote. In 2016, not much had changed. About 600,000 of Texas's fifteen million registered voters lacked the type of ID required by the new law. In the 2020 election about 5.7 million Texans were registered to vote but did not.[28] However, it is difficult to say how many did not vote because of a lack of ID versus the various other reasons discussed in this chapter that discourage people from voting.



Figure 5.15 Minorities and the poor are most affected by voter ID laws which can sometimes be called a "poll tax" because the laws require people to purchase a government ID. SOURCE: Mother Jones/Brennan Center for Justice; Antwaun Sargent (@Sirsargent), January 4, 2018, Twitter.

Republicans argue that these voter ID laws are necessary to protect the integrity of the ballot. Republican representative Dan Flynn co-authored Texas's voter ID legislation in 2011. He says he's motivated by a common sense belief: "Everybody gets to vote once, and you can't be dead to vote."[29] His interest in voter ID requirements for Texas stem in part from a sense that citizens lack confidence in the election system, and voter ID legislation is one way to raise that confidence. The idea of utilizing restrictive voting laws to protect the ballot in Texas is an argument still made by the Republican Party. The Texas legislature has numerous bills that some argue will suppress minority voters (**Figure 5.16**). In the following tweet Texas House Representative Rafael Anchía schools the GOP representative Briscoe Cain on the Jim Crow roots of the language used in his 2021 purity-of-the-ballot-box bill (**Figure 5.17**).

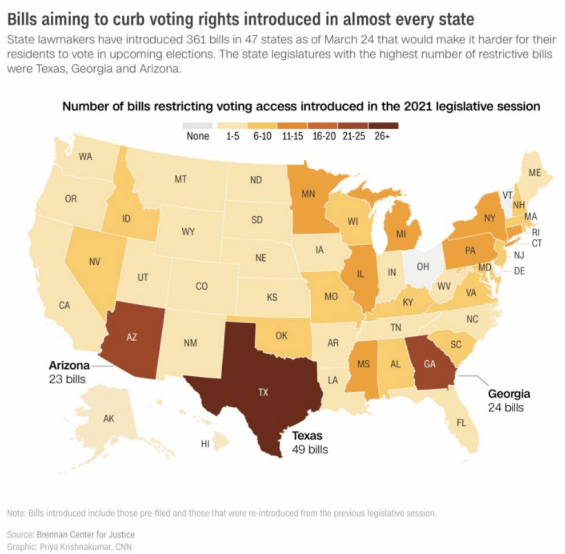


Figure 5.16 The number of bills introduced in each state in the 2021 legislative session that place restrictions on voting rights. As you can see Texas has been very busy continuing the 150-year trend in voter suppression. Whether these bills are intended to prevent Blacks, Hispanics, or the poor from voting, the effects seem to benefit the Republican Party in Texas. Source: Brennan Center for Justice; Beto O'Rourke (@BetoORourke), April 23, 2021, Twitter.



Figure 5.17 Representative Rafael Anchia questions roots of “purity” language in voter bill that creates new voting restrictions in Texas as a direct result to the 2020 presidential elections. SOURCE: Rafael Anchia (@RafaelAnchia), May 6, 2021, Twitter.

Obstacles to Voting by Mail

Since the 2020 COVID pandemic, many states have implemented steps to make voting easier and more inclusive. Texas is not one of those states. One of the options many states are making simple is **voting by mail**. However, in Texas it is not so simple. In order to vote by mail in Texas you must be sixty-five years or older, be sick or disabled, be out of the county on election day and during the period for early voting by personal appearance, or be confined in jail but otherwise eligible. If you meet the criteria, then you must fill out an application requesting a ballot by mail and submit it to the county clerk for your county. Remember politics is about power and keeping it. Those who are in power decide the rules of the game and who plays.

Voter Fatigue

Another significant factor affecting voter turnout is **voter fatigue**. Ignoring city or town and other local elections, Texas holds at least one statewide election every year and typically several. But many people just do not know the issues. They do not know who the candidates are, or what their policies are, and they might not care (apathy). So, this brings up the question, how do we fix voter apathy? In “The Joe Rogan Experience,” actor, comedian, and podcaster Joe Rogan interviews Larry Sharpe the New York candidate for the 2020 Libertarian vice president nomination to discuss how to fix vo ter apathy and get people to vote. Sharpe tells Rogan, it boils down to hope over fear: “you have to give them hope.”[30]

Republican Dominance

A third factor impacting voter turnout is the lack of competition between the political parties in Texas. Texas has a history of being a one-party state. Up until the 1960s that party was the Democratic Party, but that really began to change in the 1980s. In fact, since 1994 Republicans have won every single statewide office in Texas! Because of Republican domination in Texas, Democrats might think why bother to vote, and Republicans might think, well, Republicans are going to win whether I vote or not, so they show up in low numbers as well. Eligible voters might feel like their vote does not even matter; they do not vote if they do not feel a sense of efficacy.

So, Who Does Vote?

Ok, so you now know what makes voting more difficult and decreases voter turnout in Texas, so who is voting? Well, up until the 2020 elections older people were much more likely than younger people to vote. Older people understand the value of voting and have a vested interest in the outcome, political scientist Andrea Louise Campbell explains in a *U.S. New and World Report* analysis of the many reasons older citizens are more likely to vote:

It is easier for older people to see the relevance of government in their lives. Two of the biggest federal spending items, Social Security and Medicare, are conferred largely on the basis of age. . . For the nonelderly, it can be harder to recognize the relevance of government because it's hidden behind hard-to-see regulation or hidden in the tax code.[31]

In addition to social security and Medicare, older people are more likely to consider factors like home taxes, for example. Also, older people are less mobile than younger people, meaning they and do not move as often and stay in the same residence. Because they have maintained their residence for a longer time, they are usually already registered and familiar with their voting locations and how the process works.[32] Having lived in the same place for a longer time, older people feel a part of their community and therefore often "feel more connected to the political process" according to political scientist Eiten Hersh, who also notes that voting for older Americans is a part of their routine.[33] Another factor is their neighbors and friends who are likely close to their age and are also voters which places societal pressures to vote.[34] Older people are also members of interest groups like AARP, which reminds them that it time to vote.[35] However, the 2020 election was different in Texas from previous years. Older people did not vote in numbers as large as they had in previous years, likely due to a fear of contracting COVID. Although many voted by mail, older people are more likely to vote in person rather than by mail, and there were many barriers to voting by mail in Texas. According to Chad Dunn, general counsel for the Texas Democratic Party, "Republican leaders were aggressive, and largely successful, in shutting down efforts to allow universal mail-in balloting and multiple mail ballot drop-off points that would have made it easier for voters to cast ballots while avoiding crowded polls."[36] In **Figure 5.18** , you can see that 2020 saw an increase in voters in the eighteen to twenty-nine age category. See what conclusions you can draw from the graphs in Figure 5.18.

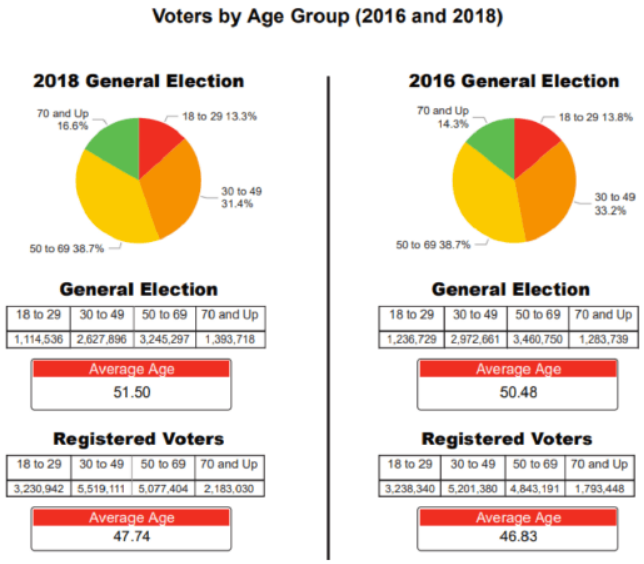


Figure 5.18 Voters by Age Group (2016 and 2018). SOURCE: Ryan Data & Research, "2020 Post Election Report.

In Texas, women also vote slightly more than males as you can see from **Figure 5.19**. In this category, 2020 was consistent with previous years.

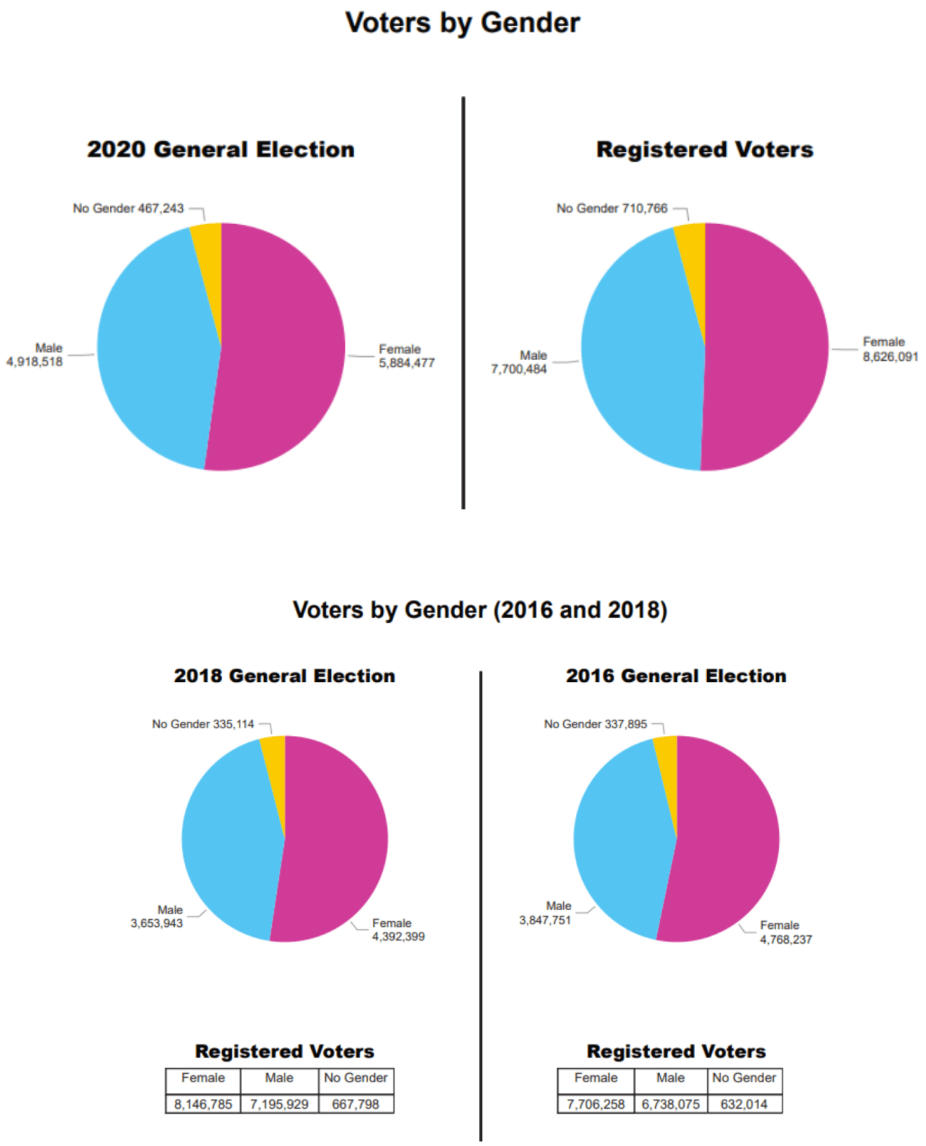


Figure 5.19 Voters by Gender (2016 and 2018). SOURCE: Ryan Data & Research, "2020 Post Election Report."

Whites are more likely to vote than other groups. However, there was a rise in both Black and Hispanic voting in the 2020 election—motivated in part by the higher death toll and economic impact from the pandemic on both groups[37]—and the Democratic Party put forth a large effort to these two groups. Hispanics make up about thirty percent of the Texas population but only about twenty percent show up at the polls. There is always talk of awakening the sleeping giant, which refers to mobilizing the Hispanic vote; however, this has not been an easy feat. There is an assumption that Hispanics will vote Democrat in the elections, but this has not consistently proved the case. Hispanics vote according to their personal preferences and that means that some vote Republican and some Democrat. So, although the Hispanic population is large enough to swing Texas blue, since they do not all vote as one, that is not as likely as it might seem. Although there were some counties where the Hispanic population voted for Biden, there were other areas where the Hispanic population voted in support of Trump. As for Black voters in Texas, many new voting laws have the potential to negatively impact Black voters, such as the availability of polling locations in urban areas and redistricting efforts in 2021.

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32. Brandon, "Why Older Citizens Vote," https://money.usnews.com/money/retir...likely-to-vote.

33. Eiten Hersh, quoted in Brandon, "Why Older Citizens Vote," https://money.usnews.com/money/retir...likely-to-vote.

34. Brandon, "Why Older Citizens Vote," https://money.usnews.com/money/retir...likely-to-vote.

35. Brandon, "Why Older Citizens Vote," https://money.usnews.com/money/retir...likely-to-vote.

36. Chad Dunn, as quoted in Harper, "Despite Record Turnout, Some Texans Were Still Shut Out," https://www.texastribune.org/2020/11...ccess-turnout/.

37. Taylor Pettaway, "Experts Say More Blacks and Latinos Are Voting in Texas This Year. Here Is What Is Motivating Them," MySA, Nov. 3, 2020, https://www.mysanantonio.com/news/lo...s-15694876.php.

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5.5: Campaigns in Texas

In states like Texas everything is bigger, including campaign funds. Governor Greg Abbott raised 43.3 million dollars in 2018 to keep his seat!

Part of Beto's success in 2018 was also due to his ability to raise huge amounts of money for his campaign. He set a record by raising over eighty million dollars! What was most impressive in that race was that until the end Beto did not receive money from Political Action Committees, also known as PACS. **Political Action Committees (PACs)** are vehicles for amassing funds, which are then spent on strategic actions their leaders hope will influence elections. On March 6, 2018, in an interview on HBO's "Real Time With Bill Maher," Beto explained why he chose not to accept any money from PACs in his run for Senate:

> So, political action committees represent the corporations and interests that have business before Congress—so the pharmaceutical industries, the telecom industries, the energy industries, the insurance industries—and they give money to members of Congress not just for access, although that's part of it. They're also buying outcomes, actual legislative language that appears in the bills, and in the bills that become laws.[38]

O'Rourke goes on to say, "When you wonder why Congress is so dysfunctional, why it doesn't represent the interests of the people it purports to serve, it's because it's so tied to the sources of

money that are coming in."[39] Since his House bid in 2014, Beto has not accepted any PAC donations and has run his campaigns on individual donors. There is much speculation that in 2022 Beto will challenge Abbott for the governorship, and it will be interesting to see if he sticks to his guns when it comes to PAC money against a big donor recipient like Abbott.

The goal of any campaign is to get the candidate's name out to the public because if the voters have not heard of you then they are not going to vote for you. So, name identification matters. If you are a candidate, you must also motivate people to vote for you, which in Texas is an uphill battle, given Texas's historically low voter turnout, especially in a non-presidential election (midterm election).

Beto has been described as a charismatic character and Democrats around the United States showed their support, but Beto really mobilized young voters through informal campaigning. Informal campaigning includes canvassing voters door to door and speaking at local events like barbeques, churches, or rodeos. Through his Instagram and Twitter posts Beto connected with college voters. College age voters are a group that is eligible to vote but often choose to stay home and not vote. Beto went to numerous college campuses in Texas throughout his campaign to speak directly to young voters and garner their support. If you followed Beto on Instagram you were able to really get an insight into his life. He even put his dental visit on social media!

Still, in order to win a general election, you need more than an informal campaign. You need a team of people and a lot of money. The bigger the race the more money usually spent to try to win, and in Texas, the candidate who spends the most money usually wins the race. While the average donor gives less than $200, Texas is a big money state. In fact, Texans give more money to campaigns than any other state! Texas has two cities in the top five for campaign donations: Dallas and Houston. And megadonors like those listed as Governor Abbott's largest donors are really financing the bulk of a campaign (Table 5.2). So, does that mean that megadonors like S. Javaid Anwar, the President of Midland Energy (who donated one million dollars), or James Doug Pitcock, the CEO of Williams Brothers Construction Co.—the largest highway construction company in Texas (and who donated $550, 000 to a "Texans for Greg Abbott" PAC and gave $250,000 to his inauguration)—have a bigger say in our democracy?

Table 5.2 Governor Greg Abbott's Biggest Donors SOURCE: Data compiled from Transparency USA,

Donors	Type	Total Donations
James D. Pitcock, Jr.	Individual	$1,0510.050.00
S. Javaid Anwar	Individual	1,013,300.00
Michael and Mary Porter	Individual	1,000,000.00
Kenny A. and Lisa Troutt	Individual	650,000.00
Arch Aplin III	Individual	500,000.00
Edward Roski, Jr.	Individual	500,000.00

Donors	Type	Total Donations
R. Drayton McLane, Jr.	Individual	500,000.00
William Harris	Individual	400,000.00
Paul L. Foster	Individual	391,864.45
Robert C. and Pamela	Individual	375,000.00

Another source for amassing campaign funds is Super PACs. **Super PACs** came into play in 2010 with the U.S. Supreme Court's decision in *Citizens United v. Federal Election Commission (FEC),* which made it much easier for people and organizations to donate anonymously to campaigns. The ruling let individuals, unions, and corporations donate on a large scale to political action committees. Donating to campaigns and donating to PACs or Super PACs are different and have different rules, and prior to ***Citizens United***, individuals, unions, and corporations were forbidden to donate amounts over a paltry $5,000 to a PAC. Something to keep in mind, however, is that in Texas individuals can donate an unlimited amount to campaigns as long as it is disclosed. Texas is only one of eleven states to have this rule. However, after *Citizens United* a company like Walmart, or Texas's Pizza Hut or Dell, could pour unlimited amounts into political action committees anonymously (**Figure 5.20**). Texas leads the nation in donations to Super PACs. Texans have donated far more money to Super PACs than voters from any other state, the vast majority of it going to conservative and Republican political committees.

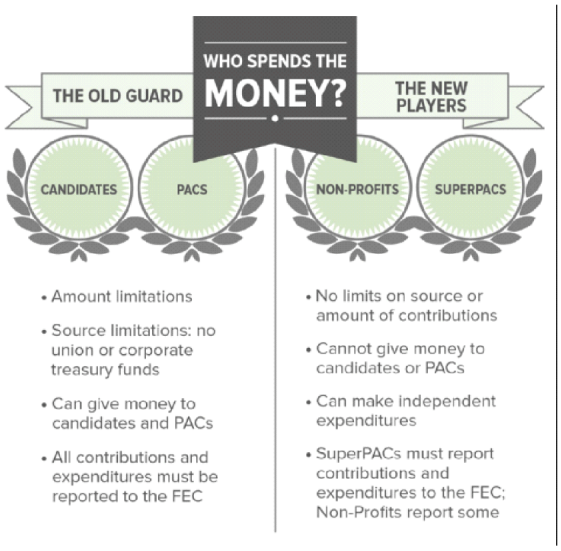


Figure 5.20 Before the Citizens United decision PACs were the main way for donors to contribute to campaigns but donors were restricted to a measly $5000, but after the Supreme Court decision, donors can donate unlimited amounts to Super PACs. SOURCE: Daniel Tokaji and Renata Strause.

So, where does all the money amassed by Super PACs go? Well, most of it goes to negative campaign advertisements that you see on the television. For candidates who have a bigger budget, formal campaigning involves television advertising and other media outlets, (newspapers, radio, websites, social media) as well as conducting polls and surveys of
voters. Polls are conducted in order to determine what the public supports and what it doesn't. It is a way for campaigns and representatives to understand what the voters want. Polls are often conducted by simple phone calls. People are randomly selected which means that every person in the population has an equal chance of being selected this is called a *random sample*. When conducting a poll, you need to have a big enough sample size to accurately represent the population, meaning you must ask enough people the same set of questions. Public opinion polling is heavily used by campaigns to help determine what voters want and what can be done to change their vote. If their vote cannot be changed, then the goal is to make them stay home and not vote.

Fear and anger are powerful emotions and negative attack ads are designed to trigger those emotions. But why? Well, if you are a staunch Democrat or Republican and you see an ad that makes your preferred candidate look bad are you really going to switch parties? No, you will not. But if the opposing party can make your candidate look bad enough, you might stay home and not vote. So, negative campaign ads serve a few useful functions. One, they trigger a powerful response to motivate you to vote against the candidate that is portrayed as being bad in the ad. Two, they help independents decide who to vote for by giving

them information. Finally, they might make people stay home and not vote if their candidate has been made to look very badly. Some examples of negative campaign include the Presidential Lyndon Johnson-Barry Goldwater 1964 Daisy ad, which invoked potential nuclear devastation. This Daisy attack ad was so powerful it only aired once but helped Johnson achieve one of the biggest landslide victories in U.S. history!

Campaign ads do not have to be negative. Many campaigns try to piggyback on presidential popularity to gain votes. Likening yourself to a popular president in your state or receiving support from others in higher office in your state can often boost you in the polls. In the Republican primary in 2020 between Kathleen Wall and Troy Niehls, Wall tried to cash in on Texas's support for Trump by likening herself to him even down to her hair, though Niehls ultimately won the seat for Texas's Twenty-Second Congressional District.

The opposite can also be true, negative campaign ad run by an Abbott PAC likened Democrat Wendy Davis to then President Obama to her detriment here in Texas. In this ad, Abbott claimed Davis was "just like Obama."[40] Governor Abbott bought 251 hours of air time compared with Davis's 105 and won the state by double digits.[41]

Many criticize Super PACs by saying that it allows the wealthy to have a bigger voice and anonymously. Critics also say that negative campaign ads are detrimental because they distort the truth. What do you think? Are Super PACs so super? So, do mega-donations that mean that megadonors like S. Javaid Anwar, the President of Midland Energy (who donated one million dollars), or James Doug Pitcock, the CEO of Williams Brothers Construction Co.—the largest highway construction company in Texas (and who donated $550, 000 to a "Texans for Greg Abbott" PAC and gave $250,000 to his inauguration)—have a bigger say in our democracy? The vast amounts of money spent on campaigns in Texas leads many to say that Texas is a Pay to Play state where those who have money and can donate to campaigns often through PACs have a bigger voice.

The Path to Nomination

Running for office in Texas can be as easy as collecting one hundred signatures on a city election form or paying a registration fee of several thousand dollars to run for governor of the state. However, a potential candidate still needs to meet state-specific requirements covering length of residency, voting status, and age.

Deciding to Run

Potential candidates must also consider competitors, family obligations, and the likelihood of drawing financial backing. Spouses, children, work history, health, financial history, and business dealings also become part of the media's focus, along with many other personal details about the past. The realities of elections drive many eligible and desirable candidates away from running.

Seekers of Elected Office by Demographic

Candidates for office are slightly less diverse than the general population, as is seen in **Figure 5.21**. A lack of diversity includes gender. Dramatically fewer women run than men. Studies have shown that family obligations rather than desire or ambition account for this choice. Further, women are more likely than men to wait until their children are older before entering politics, and women say that they struggle to balance campaigning and their workload with parenthood.[44]

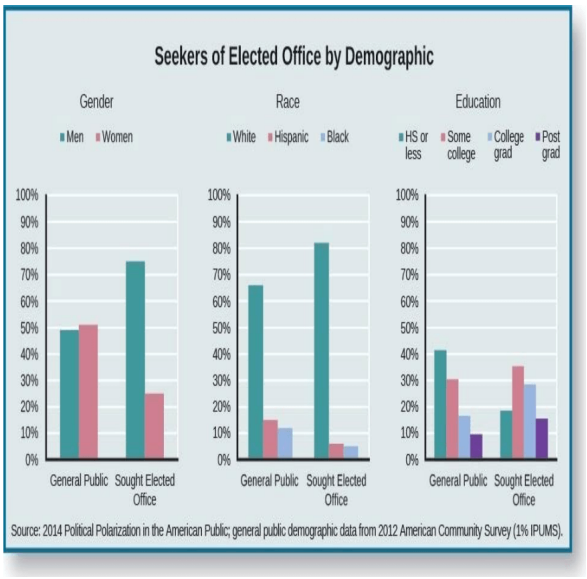


Figure 5.21 Those who seek elected office do not generally reflect the demographics of the general public: They are often disproportionately male, White, and more educated than the overall U.S. population. SOURCE: Political Polarization in the American Public, general public demographic data from 2012 American community Survey (1% IPLUMS).

Because higher office is often attained only after service in lower office, there are repercussions to women for waiting so long. If they do decide to run for the U.S. House of Representatives or Senate, they are often older, and fewer in number, than their male colleagues.

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38. Bill Maher, host, “Real Time with Bill Maher” (Beto O’Rourke interview), March 6, 2018, https://www.politifact.com/factcheck...pac-donations/.

39. “Real Time with Bill Maher” (Beto O’Rourke interview), https://www.politifact.com/factcheck...pac-donations/.

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41. Ayala and Blanchard, “Abbott Ad Spending,” https://www.nytimes.com/2014/10/24/u...-in-texas.html.

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5.6: Types of Elections

Elections play an essential part in American democracy They offer American voters the opportunity to participate in their government with little investment of time or personal effort. Yet voters should make decisions carefully. Elections are very important because the outcomes of government actions are almost always the result of the people who hold elected office and elections determine which policies we will have to live by. Texas uses four types of elections: primary elections; runoff elections; general elections; and special elections.

Primary Elections

State law, not federal, regulates most aspects of general and local, also called *municipal*, elections (county, city, and township), as well as primary elections, and are predominantly responsible for administering them. **Primary elections** are used either to determine the nominees for political parties in advance of a general election or to narrow the field of candidates for a given elective office. Each state decides how it will run primary elections. In Texas, primary elections are held on the second Tuesday in March on even-numbered years. There are several ways that primary elections are organized: closed; semi-closed; open; semi-open: and top-two vote getters (**Table 5.2).**



NATIONAL CONFERENCE of STATE LEGISLATURES

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State Primary Election Systems

**Note this chart only pertains to state, local and congressional elections.*

	Closed *Voters must be registered members of the party holding the primary.*	Partially Closed *Voters must be registered members of the party holding the primary; however, parties may choose each election whether to allow unaffiliated voters to participate.*	Partially Open *Voters may choose which primary to vote in, but must either do so publicly or their vote may be regarded as a form of registration with that party.*	Open to Unaffiliated Voters *Unaffiliated voters may choose which party primary they want to vote in, but voters affiliated with other parties may not cross over.*	Open *Voters may choose which primary to vote in privately. The choice does not register the voter with the party.*	Top-Two *The top two vote-getters advance to the general election regardless of party.*	Applies to Presidential
Alabama[2]					X		YES
Alaska[3]		X					NO
Arizona[4]				X			NO
Arkansas[5]					X		YES
California[6]						X	NO
Colorado[7]				X			YES
Connecticut[8]		X					NO
Delaware[9]	X						YES
Florida[10]	X						YES
Georgia[11]					X		YES
Hawaii[12]					X		NO
Idaho[13]		X					YES
Illinois[14]			X				YES
Indiana[15]			X				YES
Iowa[16]			X				YES
Kansas[17]				X			NO
Kentucky[18]	X						YES
Louisiana[19]						X	NO
Maine[20]				X			NO
Maryland[21]	X						YES
Massachusetts[22]				X			YES
Michigan[23]					X		NO
Minnesota[24]					X		YES
Mississippi[25]					X		YES
Missouri[26]					X		YES
Montana[27]					X		YES
Nebraska[28]						X	NO

	Closed *Voters must be registered members of the party holding the primary.*	Partially Closed *Voters must be registered members of the party holding the primary; however, parties may choose each election whether to allow unaffiliated voters to participate.*	Partially Open *Voters may choose which primary to vote in, but must either do so publicly or their vote may be regarded as a form of registration with that party.*	Open to Unaffiliated Voters *Unaffiliated voters may choose which party primary they want to vote in, but voters affiliated with other parties may not cross over.*	Open *Voters may choose which primary to vote in privately. The choice does not register the voter with the party.*	Top-Two *The top two vote-getters advance to the general election regardless of party.*	Applies to Presidential
Nevada[a]	X						YES
New Hampshire[a]				X			YES
New Jersey[a]				X			NO
New Mexico[a]	X						YES
New York[a]	X						YES
North Carolina[a]		X					YES
North Dakota[a]					X		NO
Ohio[a]			X				YES
Oklahoma[a]		X					YES
Oregon[a]	X						YES
Pennsylvania[a]	X						YES
Rhode Island[a]				X			YES
South Carolina[a]					X		YES
South Dakota[a]		X					YES
Tennessee[a]			X				YES
Texas[a]					X		YES
Utah[a]		X					YES
Vermont[a]					X		YES
Virginia[a]					X		YES
Washington[a]						X	NO
West Virginia[a]				X			YES
Wisconsin[a]					X		YES
Wyoming[a]			X				YES

Table 5.2 State Primary Election Systems

In a **closed primary**, only registered members of that political party can participate (vote). Therefore, in a Democratic primary only registered members of the Democratic Party can vote, and in a Republican primary, only registered members of the Republican Party can
vote. So, what happens if you are not registered with either party, a situation described as *unaffiliated* or *independen*t? Well, then, you are left out and cannot vote in a closed primary election! There are nine states that have closed primaries, including Delaware, Florida, Kentucky, Maryland, Nevada, New Mexico, New York, Pennsylvania, and Oregon. Among states, the closed primary is the second most common type of primary.

Another type of primary is called a *partially closed* or *semi-closed primary*. As in closed primaries, registered party members can vote only in their own party's primary. Semi-closed

primaries, however, allow unaffiliated (independent) voters to participate as well. Depending on the state, Independents either make their choice of party primary privately, inside the voting booth, or publicly, by registering with any party on election day. There are seven states that have semi-closed primaries, including Alaska, Connecticut, Idaho, North Carolina, Oklahoma, South Dakota, and Utah.

The open primary is the most common type of primary. In an **open primary** election, any registered voter can participate regardless of party affiliation with the caveat that voters can vote in only one party's primary during a single primary period. Voters in open primary states may be given ballots from both parties, but they may mark only one of them. What this means is that if you are a registered Republican, but you want to vote in the Democratic primary, you can, but then you cannot vote in the Republican primary election. This does not mean that you must then still vote Democratic in the general election just because you voted in the Democratic primary. In an open primary system, all registered voters can participate, even independent voters! Texas is one of fifteen states that has open primaries. Alabama, Arkansas, Georgia, Hawaii, Michigan, Minnesota, Mississippi, Missouri, Montana, North Dakota, South Carolina, Texas, Vermont, Virginia, and Wisconsin all have open primaries.

A variation of the open primary is called the *partially open* of *semi-open primary*. The most significant difference between a semi-open primary and open primary system is the use of a party-specific ballot. In a semi-open primary, a public declaration in front of the election judge is made and a party-specific ballot given to the voter. Certain states that use the open-primary format may print a single ballot and the voter must choose on the ballot itself which political party's candidates they will select. There are six states that have semi-open primaries. These include Illinois, Indiana, Iowa, Ohio, Tennessee, and Wyoming.

Runoff Elections

Winning the primary election requires an **absolute majority** in Texas, meaning that the party's nominees must have more votes than all opponents combined—fifty percent plus one vote. When you have three or more candidates running in the primary, it is unlikely that any candidate will receive an absolute majority of votes. If no candidate receives an absolute majority, there is a **runoff election** between the top two vote-getters.

Voter turnout in these elections can be very low, often in the single digits. Texas has low voter participation especially in primary elections. As reported in the *Texas Tribune*, "with 16.2 million Texans registered to vote, just 25.2 percent cast a ballot in the primary election," and that was the presidential primary. Turnout for gubernatorial primaries in Texas historically is much lower with only 11.6 percent turnout in the 2014 gubernatorial primary here in Texas. Only an average of 8.5 percent of eligible Texans vote in the Constitutional elections (**Figure 5.22**).

Do you still think your vote doesn't matter?

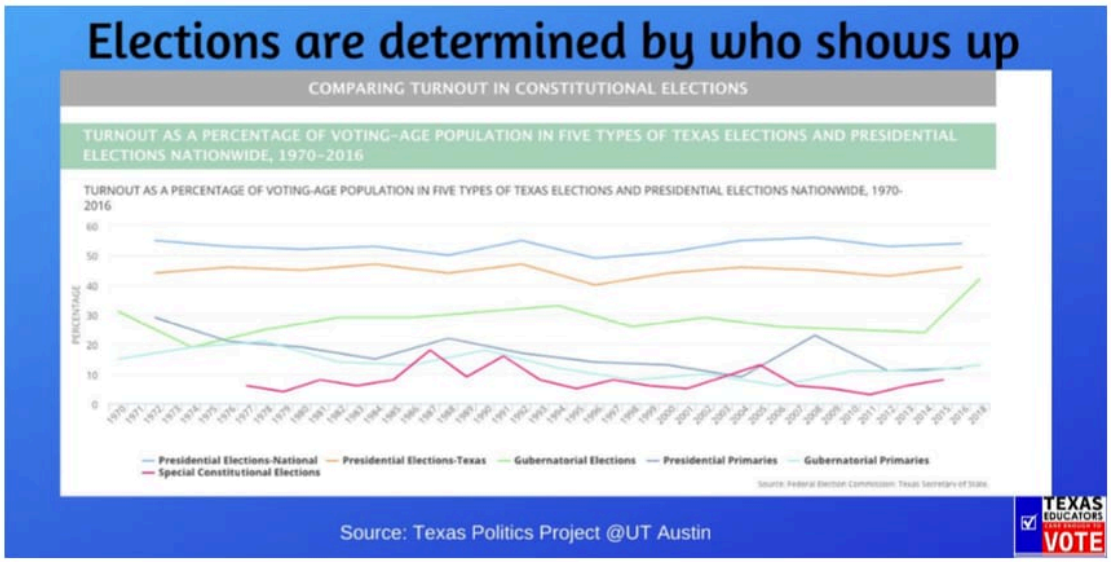


Figure 5.22 Voter turnout for presidential and gubernatorial elections and primaries compared with special constitutional elections. SOURCE: Texas Politics Project @UT Austin.

General Elections

A **general election** is an election in which voters cast ballots to select public officials at any level, including city, county, state, or country. General elections determine the final winner—the candidate to take office. Usually, the candidate obtaining a **plurality**, that is, the most votes wins (even if not necessarily an absolute majority of votes, such as when three or more candidates run for a particular office). At the presidential level, states determine the winner through their *electors*, or representatives, in the electoral college. Electors cast votes from their respective states to determine the president and as has been the case in a number of national elections the winner had not received the *popular vote*, that is, the majority of votes cast nationally.

Major state officials, such as the governor, lieutenant governor, attorney general, and comptroller of public accounts, are elected in **midterm elections,** that is elections that occur in nonpresidential election years. Previously Texans had the option of **straight-ticket voting.** This meant that voters could check a box at the top of the ballot marking votes for candidates from a single party, all Republicans or all Democrats. Not all states have this option. In fact, Texas has been one of only nine states to have straight-ticket voting. Since September 2020, however, Governor Greg Abbott has banned straight-ticket voting, arguing the ban forces voters to make more informed choices.[42] Critics of this decision argue that Republicans stand to gain more because in the past straight-ticket voting was employed more by Democrats.[43] The populous counties that voted straight ticket for Democrats in the 2016 presidential elections include Dallas, Bexar, Hidalgo, Travis, Harris, and El Paso.[44] More Republicans employed straight-ticket voting in Collin, Fort Bend, and Denton.[45]

Special Elections

Special elections are used to ratify or reject Texas constitutional amendments, fill elected offices that have become vacant between general elections, provide approval to borrow money, or other non-recurring issues. In most cases, special elections occur after the **incumbent**—the current holder of a political office—dies or resigns, but they also occur when the incumbent becomes ineligible to continue in office. Governor Greg Abbott called a thirty-day special session in August 2020 to replace Republican senator Pat Fallon for the Texas Senate. Fallon resigned his position after being nominated for U.S. Congress and

winning the seat handily in the heavily Republican district of rural North Texas. As with primary elections, general elections also require fifty percent plus one, an absolute majority, to win. In the six-candidate race to replace Fallon, no one candidate was able to secure enough votes to have the absolute majority required to win. Shelly Luther, who held a narrow lead of 164 votes[46], and State Representative Drew Springer of Muenster advanced to the runoffs. What made this election interesting is that Luther, who is not a politician and has repeatedly criticized Governor Abbott's handling of the COVID pandemic, had gained national attention after being jailed for reopening her hair salon in Dallas despite mandatory closures. The close race between the two Republicans indicated many Texans agreed with Luther's position and signaled ruptures within the Republican base.[47] Springer ultimately won in the runoff election with 56.5 percent of the vote.[48]

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42. Jolie McCullough, "Gov. Abbott Signs Bill to Eliminate Straight-Ticket Voting Beginning in 2020," *Texas Tribune*, June 1, 2017, https://www.texastribune.org/2017/06...ill-eliminate- straight-ticket-voting/.

43. McCullough, "Straight-Ticket Voting," https://www.texastribune.org/2017/06...ticket-voting/.

44. McCullough, "Straight-Ticket Voting," https://www.texastribune.org/2017/06...ticket-voting/.

45. McCullough, "Straight-Ticket Voting," https://www.texastribune.org/2017/06...ticket-voting/.

46. Patrick Svitek, "Special Election Runoff between Shelley Luther and State Rep. Drew Springer Set for Dec. 19," *Texas Tribune*, Oct. 10, 2020, https://www.texastribune.org/2020/10...drew-springer/.

47. Asher Price, "Texas Senate Runoff Shapes Up as Battle for the Future of Texas Republican Party," *Austin American-Statesman,* Dec. 11, 2020, https://www.statesman.com/story/news...xy/3896349001/.

48. Eleanor Dearman, "Drew Springer Wins Texas Senate District 30 Seat Over Shelley Luther," *Fort Worth Star-Telegram,* Dec. 19, 2020, https://www.star-telegram.com/news/p...t/article24795.

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5.7: Conclusion

After Reconstruction ended, formal discrimination emerged in a Jim Crow period of legal segregation. Formal discrimination in voting included poll taxes and the all-White primary. Both formal and informal barriers systematically controlled minorities in Texas's history of disenfranchising voters. A timeline of some of the more recent important court cases and legislation underscores the underlying discrimination of minorities in Texas.

- 1944: Supreme Court overturned *Grovey v. Townsend* in *Smith v. Allwright,* which ruled the all-White primary violated the Fifteenth Amendment.
- 1954: Supreme Court ruled in *Brown v. Board of Education* that separate schools for Blacks and Whites was unconstitutional, overruling the segregation enshrined by Jim Crow laws.
- 1954: *Hernandez v. Texas*: Argued Fourteenth Amendment equal protection that Hispanics are a class apart; U.S. Supreme Court upheld this ruling; upended Jim Crow segregation for Mexican Americans.
- 1965: Voting Rights Act passed during Lyndon B. Johnson's administration that required preclearance of changes to electoral laws in states with a history of discrimination.
- 1966: Supreme Court rules poll taxes in Texas are unconstitutional in *United States v. State of Texas*.
- 2009: Twenty-Fourth Amendment outlaws poll taxes in 1964; Texas does not officially ratify it until 2009.

While these represent the historic barriers to political participation in Texas, barriers to voting continue to exist in Texas today that include some of the country's strictest voter ID laws as well as socioeconomic factors, obstacles to mail-in voting, voter fatigue, and one-party dominance. Traditionally a low voter turnout state, voter registration has increased, younger voters are becoming more active, and elections have become more competitive—and expensive! Megadonors, gerrymandering, and the partisan redistricting expected after the 2020 census are likely to lessen Democratic inroads from demographic change. And even though urban areas are now largely Democratic, statewide and national offices continue to be Republican strongholds.

Key Terms and Concepts

absolute majority

all-White primary: a primary where only Whites could vote in the Primary election. This was overturned in Smith v. Allwright.

Black Codes

Citizens United

closed primary: a preliminary election in which only registered members of that party can vote.

general elections: a final election where candidates representing their respective political party are elected to office.

gerrymandering: a process where geographical boundaries are drawn in a biased way to favor one party or class.

grandfather clause

incumbent: the current holder of a political office.

Jim Crow: national and state laws passed to disenfranchise African Americans by preventing them from voting, getting an education, working, and other opportunities. There were nearly 30 Jim Crow Laws passed in Texas.

literacy test

midterm elections: the congressional elections that occur in the even-numbered years between presidential election years, in the middle of the president's term.

motor-voter law

open primary: a preliminary election in which any registered voter can vote regardless of party affiliation.

plurality

Political Action Committee (PAC): vehicles for massing funds, then spending them on strategic actions their leaders hope will influence elections.

poll tax: an amount of money (a tax) that an individual had to pay in order to be able to vote. Usually, the receipt had to be attached to the ballot.

primary elections: a preliminary election where voters select candidates to represent the party in the general election.

redistricting: the drawing of geographical boundaries to proportionally distribute the population.

runoff election: an election when no single candidate receives a majority of votes in the primary, so the two top vote-getters run again.

secret ballot: a voting method where the vote is cast anonymously. This is done to prevent attempts to influence the voter by intimidation, blackmailing, and potential vote-buying. Also known as the Australian ballot.

special elections: elections used for constitutional amendments, fill vacancies between elections, and other non-reoccurring issues.

straight-ticket voting: voting for all one party's candidates usually by checking a box designating the political party.

Super-PACS: The U.S. Supreme Court's decision in Citizens United vs. FEC (2010) made it much easier for people and organizations to donate anonymously to campaigns. The ruling let individuals, unions, and corporations donate on a large scale to PACs.

voter fatigue

voter registration

voter ID laws

voting by mail

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5.8: Critical Thinking Questions

1. Why did Mexican Americans see the 14th amendment as a way to have their rights respected?

Section 1 of the 14th amendment states that “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” Mexican Americans saw the equal protection clause as applying to them. The Hernandez lawyers argued Mexican Americans were “a class apart” and did not neatly fit into a legal structure that recognized only black and white Americans.

2. Why did some states argue the 14th amendment did not apply to Mexican Americans?

Some states argued that Mexican Americans were white and therefore the 14th amendment did not apply to them because the purpose of the 14th amendment was to stope states from discriminating against blacks. Remember this is one of the amendments adopted right after the Civil War. The 13th, 14th, and 15th amendments are also known as the Civil War amendments.

3. Is Texas’s voter id law fair or harming civil liberties of some in our state?
The Voter ID law is controversial because some claim it is a modern-day poll tax. Minority voters are disproportionately affected by the law.

In principle, there is nothing wrong with requiring people to provide identification in order to vote. Most Americans support voter ID laws and possess the necessary ID -- a driver's license, say, or (if they happen to live in Texas) a gun license. The trouble, still unresolved by many states that have enacted these laws, is that not every citizen has easy access to such a document. It's perhaps difficult for people living relatively orderly, prosperous lives to understand how a 21st-century American can lack appropriate ID or have difficulty obtaining it. But for many elderly and poor, and others besides, it's no mystery. Birth certificates are long lost or, in some instances, were never issued at all. Belongings have been destroyed by fire or left behind in a transient rush. Paperwork has disappeared. Public transportation is used in lieu of a car. **Minorities and the poor** are most effected by the voter id laws. Called a **“poll tax”** because have to pay for government id. **600,000** voters **of 13.6 million** registered voters (about 4.4%) in Texas did not have the proper form of id to vote in 2014. Even Texas’s laws in 2020 concerning mail in ballots were designed to prevent minorities from voting since minorities are more likely to vote Democrat.

4. Are Super PACs so super? Are they fair?

In 2010, the U.S. Supreme Court’s decision in Citizens United vs. FEC made it much easier for people and organizations to donate anonymously to campaigns. The ruling let individuals, unions, and corporations donate on a large scale to political action committees, or PACs (PACs are vehicles for massing funds, then spending them on strategic actions their leaders hope will influence elections). Prior to Citizens United, individuals, unions, and corporations were forbidden to donate amounts over a paltry $5,000 to a PAC. But after it, a billionaire like George Soros or a company like WalMart could pour unlimited amounts into political action committees anonymously. Because of this ruling some argue that Super PACs allow the wealthy to have a bigger voice in our democracy.
You can also argue from the other side that Super PACs are good for democracy because many are formed by interest groups which the average person can join like the NRA. The interest groups form Super PACs to get people elected who are supportive of the group and because of this, individuals are represented through Super PACs.

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6: INTEREST GROUPS AND LOBBYING IN TEXAS

Learning Objectives

By the end of this chapter, you should be able to:

- Evaluate the role of interest groups in Texas.
- Define the essential characteristics of interest groups and their distinctions from political parties.
- Identify the various types of interest groups that operate in Texas.
- Analyze the techniques used by interest groups to influence Texas government.
- Discuss how and by whom interest groups are regulated.

Key Terms and Concepts: pluralistic democracy; interest groups; dominant/complementary state; free rider; "open-shop" state; public interest groups; earmarks; Section 501(c)(3); lobbying; access; revolving door; regulatory capture; grassroots organizing; targeted mass mailings; electioneering; political action committees (PACs); *United v. FEC*; dark money; litigation; *amicus curiae* brief, Texas Ethics Commission (TEC)

The Sharpstown Bank scandal was a "pump and dump" securities fraud that occurred in Texas during the early 1970s. *Pump and dump* describes behind the scenes unethical manipulation of the price of a stock—in this case stocks in an insurance company related to Sharpstown Bank—to inflate its perceived value so that those who have the stock can sell it at a falsely inflated price. The scandal involved corruption at the highest levels of the state government. The name came from the involvement of the Sharpstown area of Houston. The scandal revolved around Houston banker and insurance company manager Frank Sharp and his companies, the Sharpstown State Bank and the National Bankers Life Insurance Corporation (NBL).

The scheme was allegedly hatched by Sharp, who sought passage of new state bank deposit insurance legislation that would benefit his own financial empire. Sharp granted $600,000 in loans from his bank to state officials who would, in turn, purchase stock in National Bankers Life. The stock would then be resold on behalf of these officials at a huge profit, but only after Sharp artificially inflated the company's value and its assets. The scheme succeeded in generating over $250,000 in profits for the state officials and other investors on the order of a quarter of a million dollars. The overvalued stock was used an as enticement by Sharp, who pushed for legislation that would benefit his insurance company and, thus, its investors (the very people who would work to push the legislation through).

One of the victims of the scandal, Strake Jesuit College Preparatory School, sued seventy-three individuals after it lost six million dollars and a portion of the school's land following the advice of Sharp. The Jesuit lawsuit contended that the Houston Educational Foundation, Inc. (which operated Strake Jesuit) lost credit, reputation, and the "well-established ability to obtain regular and sizable donations" after its former head, Father Kennelly, lent several million dollars of Jesuit money to Sharp.[1] A number of other multi-million dollar civil lawsuits were filed against Sharp, the bank, the insurance, and others.

In the midst of the scandal and these lawsuits, the U.S. Securities and Exchange Commission (SEC) began investigating Sharp and the bank's actions. The SEC subsequently filed criminal and civil charges against former state attorney general Waggoner Carr, former state insurance commissioner John Osorio, Frank Sharp, and nearly two dozen state other officials and former state officials. Osorio was convicted of conspiracy and embezzlement and faced other charges of fraud and perjury. In addition, the incumbent governor, Preston Smith, was labeled an unindicted coconspirator in a bribery case and lost his bid for reelection. The incumbent speaker of the Texas House of Representatives, Gus Mutscher, Jr., and two of his associates were indicted and later convicted.

Allegations of bribery to push the favorable bills through the government spread to Lieutenant Governor Ben Barnes. Barnes claimed that he had no knowledge of the involvement of several state senators in the Sharpstown scheme. Despite these claims and the fact that he was never formally accused of any crimes, the scandal certainly adversely affected Barnes' run for governor, which proved unsuccessful, and his early exit from public office. Over half of the members of the Texas legislature were either intimidated by the prospect of future investigations and chose not to run for reelection or voted out of office.[2] Joseph P. Novotny, former president of the Sharpstown State Bank, pleaded guilty to one count of fraud.

Twenty years later, in the early 1990s, the Texas legislature, at the insistence of Governor Ann Richards and responding to a series

of ethics controversies, passed legislation creating the Texas Ethics Commission, banning campaign donations inside the capitol, and enacting new lobbyist disclosure rules.[3]

6.1: Scorned and Tolerated- The Role of Interest Groups in Democracy

6.2: Why Interest Groups Form in Texas

6.3: Types of Interest Groups

6.4: Texas Interests Groups- Tactics, Financing, and Influence

6.5: Regulation of Interest Groups in Texas

6.6: Conclusion

6.7: Critical Thinking Questions

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6.1: Scorned and Tolerated- The Role of Interest Groups in Democracy

What is an interest group?

Interest groups play an important role in a democracy. James Madison envisioned the existence in the United States as a **pluralist democracy**, that is, "a form of democracy where governments make decisions as a consequence of the interaction between groups and organizations having different ideas and contrasting arguments."[4] In a pluralist democracy groups compete with each other to influence policy; no particular group is more influential than another. Madison, the primary drafter of the U.S. Constitution in 1787, defended such ideas while urging its ratification through essays he and others published in the *Federalist Papers*. Writing in *Federalist 10*, Madison discussed how "mischiefs of factions" (interest groups) would play a significant role in American politics.[5] Not surprisingly, his political career included considerable involvement with interest groups, which indicates that he believed interest groups could have a beneficial effect on policy, but only when they supported policies that would promote the general good. However, he acknowledged the factious—potentially divisive—nature of some interest groups. These divisive groups promoted their own selfish interests. Madison predicted that such groups would remain strong and active, and of course, Madison was correct.[6] Some of Madison's sentiments were more recently been shared by political scientist Robert Dahl, who championed the theory of pluralistic democracy, contending that political outcomes are enacted through competitions and compromises between interest groups within the system of checks and balances.[7]

Most Texans have at least one political interest, and they might attempt to influence the government on their own. But they are most likely to influence the state government by joining a group that is specifically organized to accomplish an objective of a group of individuals with like interests. Joining an interest group is another form of political participation and an alternate channel to influence government. An **interest group** is an organization of individuals with shared goals that attempts to influence governmental decisions and public policy through a variety of activities. Interest groups provide a link between groups of people and the government. The linkage created by interest groups is protected both by the First Amendment to the U.S. Constitution and a similar provision in the Texas Constitution, which both guarantee individuals and groups rights to freely associate and assemble and the right to petition government to redress grievances (e.g., the right to make a complaint to, or seek the assistance of, one's government, without fear of punishment or retaliation):

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.[8]

Thus, interest groups become the mechanisms through which people with shared goals protect and advance their own long term interests.

As you've already discovered in previous chapters, a political party is a group of people who organize to win elections, operate the government, and determine public policy. Unlike political parties, interest groups do not function primarily to elect candidates under a certain party label or to directly control the operation of the government. Most commonly, interest groups try to influence those who already hold positions of governmental power. A political party may blur its position on issues or may appeal to a much wider array of opinions on issues in order to draw in the greatest number of voters. Interest groups, on the other hand, are focused and take definitive positions on issues. In addition, political parties try to organize and group a majority of people together to create a governing power that works for that majority. An interest group only works on behalf of a specific group of people who share the same viewpoint. During elections, political parties spend significant time, energy, and money attempting to produce positive publicity about their candidates and develop mechanisms to distribute that information to their supporters and undecided voters. Shortly before elections, interest groups will canvass the views of candidates from each party on issues with which they are concerned and notify their members of which candidates' views agree and disagree with the group's positions.

Despite Madison's defense of a pluralist democracy, both political parties and interest groups were often viewed with scorn by the drafters who contributed to of the U.S. Constitution. Neither the Republicans nor the Democrats had been organized into a political party when the country elected George Washington as its first president, and in his farewell address, Washington warned against the creation of political parties altogether: "Domination of one faction [by which Washington meant political party] over another... is itself a frightful despotism."[9] Nevertheless, both parties and interest groups have now become part and parcel of political life, tolerated originally as possible limitations on the newly created strong federal government. The greatest concern,

however, was that these two different groups would “promote their own partial or narrow interests over the common good.”[10] Little did the drafters know that certainly concerning interest groups (and some might say political parties as well) this concern would become a reality.

Since the early twentieth century, political scientists have looked more kindly on political parties and interest groups, noting the capacity of interest groups and parties to establish crucial linkages between citizens and government. Interest groups are considered institutions that legitimately work within the system. As such, the key factors that encourage the development of, and strengthen, interest groups and their ability to shape policy outcomes should be explored. Texas is among the states where interest groups have a high potential for great influence.

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6.2: Why Interest Groups Form in Texas

Interest groups have an overwhelming influence in what are known as *dominant* or *complementary* states. In some states, interest groups have substantial political influence. In others, dissimilar political forces that include interest groups complement each other. In a **dominant/complementary state**, interest group influence is strong (i.e., dominant) but balanced (i.e., complementary) by competing political forces such as political party organizations, governmental institutions, and the voters.[11] Texas is considered a dominant/complementary state, meaning that the factors in the state are more than favorable to the existence and overwhelming influence of special interest groups.

Texas is among the states where interest groups have a high potential for great influence. A number of factors affect the strength and success of interest groups in Texas, including historic lack of diversity in the state economy, limited legislative resources, a weak executive structure, low levels of political participation, and limited competition by political parties.

Historic Lack of Diversity in the State Economy

Texas's early political history was heavily influenced and shaped by its economic activity. Shortly after it became a state, the Texas economy was dominated by cattle, cotton, and timber. Subsequently, the most significant sector of the economy has historically been the oil and gas industry. As oil and gas became dominant, legislation in the state favored the more powerful energy interests over those of the other less powerful or wealthy groups. This phenomenon made collusion or cooperation between the competing groups virtually impossible. In response, the industries with less influence, such as cattle and cotton, began to implement the same strategies that had already been employed by the oil and gas industry to affect legislation and public policy. Thus, the advent of interest groups in Texas was the result of antagonistic competitors. Since that time, however, the state's economy has become quite diversified, and industries relating to energy, information and technology, service, agriculture, trade, real estate, international business, retail, education, leisure and hospitality, manufacturing, financial services, construction, and medicine have flourished. Now all these industries have interest group representation, each with a mission to influence legislation beneficial to their industry.

Limited Legislative Resources

The Texas Constitution created a weak Texas legislature, with severe constraints on the time legislators could meet (140 days every two years) and similar limits on the pay those elected to the Texas legislature could receive, insuring legislators have other jobs beyond their state duties. This was to ward off possible oppression by a strong central government of the state. Some contend this system is favorable because legislators do not spend so much time in Austin creating legislation and instead can serve the constituents well since they must return to live under the laws they authorize. However, it is alleged these constraints contribute to the possibility that legislators are more susceptible to the influence of well-financed interest groups because there is little time to substantially research prospective pieces of legislation. As a result, members of the legislature are more dependent on interest groups and lobbyists for research, information, and the drafting of legislation.

Weak Executive Structure and Resources

Texas also has a weak governor who is, at times, a figurehead who presides over an executive branch in which all but one of the officials is elected in independent partisan elections. Only one member of the executive branch, the Texas Secretary of State, is appointed by the governor. The governor may appoint the heads of various agencies, boards, panels and commissions, but only one-third of those individuals are eligible for appointment or reappointment every two years. In addition, once appointed, they cannot be fired, and the governor has little or no influence over such appointees once they have assumed their positions. The governor has no constitutional power to issue executive orders. In addition, aside from the line-item veto, he has very limited budgetary control. The Texas governor is ranked at or near the bottom of most classifications addressing the relative strengths of the nation's governors.[12]

Low Levels of Political Participation

Voter turnout is very low in Texas, though it has improved somewhat in recent elections. The

state has the second lowest voting-age participation rate compared to other states that hold primaries. Only half of registered Texas voters cast their votes 2018. Texas ranked forty-first in the country in voter turnout that year. Turnout in odd-numbered, non-presidential election years has, unfortunately always been historically lower. Not surprisingly, voter turnout the following year was only twelve percent. The state's low voter turnout is attributed to the low percentage of registered voters, high poverty rates, and low citizen education levels. Members of interest groups turn out more to vote. In addition, the individualistic/traditionalistic political subcultures of the state tends to reinforce interest group domination. Why? Because individualists believe that individuals can survive by themselves without significant government assistance. Consequently, many individuals in the state lack interest in influencing government. In addition, traditionalists contend that elite groups who control Texas's commercial interests have demonstrated their consistent success in regulating the state's flourishing economy.[13]

Low or Limited Political Party Competition

Aside from short periods of transition, there has always been the one party domination of the state. From the Civil War until the mid-1970s, no Republican was elected to the office of governor. In fact, the Democratic Party dominated state politics for the century before 1994. From then until now, Republicans have dominated state politics. Interest groups are much more influential during one party dominance. In two party states, where there is vigorous competition and shared governance, interest groups know and concentrate on influencing two—rather than one—parties. This diffusion of interest group effort, time, energy and funding among the two parties acts an inhibitor to interest group dominance of one dominant party or state politics governed by that party.

Constitutional Length and Legal Framework

The more detailed the state's constitution, the more restrictions that document generally places on the government. The Texas Constitution is universally considered too long and cumbersome. It is the second most verbose state constitution. At over 63,000 words, its length is surpassed only by the Alabama constitution. In addition, the state has adopted a liberal amendment process. Over 500 amendments have been adopted since 1876. This liberal amendment process inhibits constitutional revision. As a result, the constitutional is excessively detailed. This detail reflects the citizens' historical distrust of government. It is also highly restrictive, and its many requirements and limitations on both state and local governments make it one of the most restrictive state constitutions. All of these factors create special challenges to Texas's state government is its attempt to regulate large, organized, and well-financed interest groups and, in most cases, it will not be able to do so.[14]

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6.3: Types of Interest Groups

Texas has a long history of powerful interest groups. These groups represent a wide array of interests, advocate for innumerable agendas, and generally play a very important role in state politics. However, political scientists have not performed extensive research on interest groups in the state, so the activities and the precise nature of their influence is often difficult to determine. Nevertheless, we can describe some of the major interest groups that attempt to promote their objectives and reach in the state.

Economic Groups

The vast majority of interest groups in the state are economic interest groups—groups that exist to promote economic conditions favorable to and economic opportunities for their members. About twenty percent of interest groups are economic interest groups. They also tend to be the largest and most powerful groups because members of these groups have a vested financial interest in the success of the group. They also tend to be the best organized and most influential interest groups. They also enjoy vigorous individual involvements, commitment, and resources because economic interests generally inspire the dual concerns of both business and individuals. Business groups, labor unions, and professional associations are among the most notable economic interest groups.

Business Groups *L*arge companies usually maintain specific units designed to function as the interest group for the company (**Figure 6.1**). These company typically have wide and varied interests. Most businesses belong to associations which often engage in interest group activities to advocate for the interests of their members. Another type of business association, a trade association, typically focuses on one particular industry, and its members are drawn exclusively from that industry. Businesses, business associations, and trade associations usually have an advantage over individuals since an individual is highly likely to benefit far less than if he or she was a member of a larger, well-resourced, and more powerful interest group. Thus, people with common interests working together in groups are more effective than the same number of people working independently. The Texas Association of Business and the National Federal of Independent Business––Texas are among the most powerful business interest groups in the state.[15]



Figure 6.1 Defense contractors such as Boeing and Lockheed Martin sell extensively to the government and must, of necessity, engage in lobbying to win contracts. SOURCE: Piergiuliano Chesi.

Labor Unions Labor unions, which historically emerged in the late 1800s and early 1900s, promote the interests of only those who have joined the union. Then, workers organized to threaten strikes against business owners to protest against employee exploitation, low wages, few or no benefits, and poor and unsafe working conditions. Unlike those who hold professional and service employees, who tend to organize and join professional associations, skilled and unskilled laborers are more likely to belong to a union.

Texas is an **"open shop" state,** meaning that employees in the state maintain the option of whether or not to join a certified union. A company that has a union hires both union and non- union employees, and union membership is not a requirement for continued employment. The open shop policy was enhanced by the Texas legislature in 1955, which prohibited a union member or members to strike or picket to force an employer to recognize the union or to force other employees to accept the union as a bargaining agent if the union does not actually represent a majority of the employees working when the strike began. The 1955 act also established the procedures for holding an election to determine the sentiments of the employees, procedures clearly designed to make the union's organization efforts more difficult.[16]

In 2019, union members accounted for four percent of wage and salary workers in Texas. Nationwide, union members accounted for 10.3 percent of employed wage and salary workers in 2019. Since 1989, when comparable state data became available, union membership rates in Texas have been below the U.S. average.[17] The largest Texas union is the Texas American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), which has approximately 240,000 members.[18]

Professional Associations

Higher levels of education and advances in technology have transformed the state's workplace. Perhaps the biggest change has been an increase in professional, technical and service jobs and a decrease in the number of skilled and unskilled labor jobs. Professionals organize to promote and protect their economic interests through membership in professional organizations which lobbying on their behalf.

Two of the fastest growing number of professionals are physicians and attorneys, both of which are regulated by the state government. The Texas State Bar Association (SBA) represents approximately 90,500 active and resident attorneys in the state. The SBA contends that the organization is not merely an association or trade group designed to benefit the profession, although serving lawyers is one of its core commitments. Rather, it also focuses on supporting the administration of the legal system, assuring all citizens equal access to justice, fostering high standards of ethical conduct for lawyers, enabling its members to better serve their clients and the public, educating the public about the rule of law, and promoting diversity in the administration of justice and the practice of law.[19] Similarly, the Texas Medical Association (TMA) advocates for Texas physicians by engaging in legislative, regulatory, and legal advocacy to improve protect, and strengthen medical practices in the state, ensuring that Texas physicians receive timely and equitable payment for medical services rendered, increasing membership and member involvement to ensure the ongoing financial health and governance strength of the association, and enhancing the powerful, effective, and unified voice of Texas health care providers. The TMA asserts that if these goals are met, the environment in which Texas physicians care for their patients will also be enhanced, more efficient, quality of care will be delivered to the state's growing population, and patient-centered, cost-efficient, physician- directed care will be guaranteed.[20]

Interesting, the Texas Association of Realtors and its affiliates is arguably the most well- funded trade association in the state, as more money passed through them in the 2016 election cycle than any other such group. Realtors in Texas are also one of the most well-known interest groups in Austin, and have been for years.[21] This organization boasts more than 130,000 members, we advocate on behalf of REALTORS® and private property owners to protect private property rights and promote public policies that benefit homeowners.[22]

Non-Economic Groups

Non-economic groups promote issues in which they believe, but they do not provide members with individual financial benefits. Instead, members of non-economic groups work for what they believe is the benefit of society as a whole, not just members of the group. These benefits are often called public or collective goods. These benefits may be purposive benefits (emotional and psychological benefits members receive knowing they have contributed to a cause they feel is worthwhile); solidarity benefits (benefits members receive after meeting new people and friends they work with to promote the cause); or informational benefits (educational benefits members receive after learning more about the issues that matter to them).[23]

Public Interest Groups **Public interest groups** promote the broad, collective good of citizens and consumers. They pursue goals which, if achieved, provide benefits to the public at large or to a broader population than the group's own membership. Many public interest groups seek to promote political reforms that enhance the role of the public in the political process. Since there is no single, universally applicable definition or test of the public good, there is often significant disagreement about what is—and is not—in the public interest. This is especially so when different public interest groups taking vastly different positions on a number of issues. Thus, with a single issue, several quite different public interests may be at stake.

The League of Women Voters of Texas is an example of a public interest group. It is a nonpartisan, grassroots civic organization that encourages informed and active participation in government. The League works to increase understanding of major public policy issues and influences public policy through education and advocacy. Membership in the League is open to people sixteen years of age or older.[24] The League believes that democratic government depends upon informed and active participation in government and that this public interest goal is met by providing nonpartisan voting and election information to Texas voters without supporting or opposing political candidates or parties.[25] In addition, this group encourages people to become personal issue advocates by encouraging informed and active participation

in government, increase understanding of major public policy issues, and influences public policy through education and advocacy.[26]

Common Cause–Texas (CCT) is another public interest organization. CCT's mission statement provides:

> Using a powerful combination of grassroots organizing, coalition building, policy development, public education, lobbying and advocacy, we work towards solutions that will reduce the influence of money in politics, end partisan gerrymandering and ensure that our elections are free, fair and accessible.[27]

Common Cause advocates for pro-democracy reforms that it contends are in the public interest. Those reforms included promoting ethical, open accountable government, reducing the influence of money in politics, ensuring fairly drawn, non-gerrymandered districts and representation that more closely resembles the voters, expanding voting rights and assuring the integrity of elections, and protecting the Constitution and the independence of the courts and judges.[28]

A number of other organizations also qualify as public interest groups and enjoy tax- exempt status under **Section 501(c)(3)** of the Internal Revenue Code. Three of those organizations are public charities, private foundations, and private operating foundations. A public charity is an organization with active programs. Examples include churches, animal welfare agencies, educational organizations, and benevolence organizations (a group organized for charitable purposes, such as Galveston's Hebrew Benevolent Society, which established the first Jewish cemetery in Texas in 1855). They usually receive a substantial portion of its revenue from the general public or from government. A private foundation is often referred to as a non- operating foundation because it does not typically have active programs. Because they are not required to be publicly supported, they must seek alternative funding from a relatively small number of donors, single individuals or families. Private foundations are usually thought of as "nonprofits" which support the work of public charities through grants. A private operating foundation often maintains active programs similar to a public charity, but it also share attributes with a foundation. Thus, private operating foundations are often considered hybrids. The focus of many of these 501(c)(3) organizations is religious, charitable, scientific, public safety, literary and educational.[29]

Issue and Ideological Groups Interest groups that focus on specific issues and ideological perspectives are known as issue and ideological groups. Some groups focus on a single-issue area or are heavily partisan. Some of the most popular issues are the right to choose (abortion), gun control, health care, the environment and foreign policy. State groups that are keenly interested in abortion-related issues are Texas Right to Life and the Texas chapter of the National Abortion and Reproductive Rights Action League, NARAL Pro-Choice Texas. The two primary and perhaps most powerful groups advocating for the protection of the lawful possession and use of firearms, promoting gun safety training, and supporting shooting sports, hunter education, and wildlife conservation efforts are the Texas State Rifle Association and Friends of the NRA (National Rifle Association) – Texas (**Figure 6.2**). The Lone Star Sierra Club and The Nature Conservancy in Texas are examples of interest groups that focus on clean air and water, alternative energy solutions, responsible transportation programs, and ensuring a stable climate.



Figure 6.2 Texas Gun Rights Lobby Pushing Back on Calls for New Laws
Note. Gay, Eric. Associated Press (Aug. 2019). Texas' gun-rights lobby swiftly pushed back after Governor Greg Abbott raised the possibility of tighter firearms laws in response to a gunman killing twenty-two people and injuring twenty-four others at an El Paso Walmart on August 3, 2019. A gun- rights rally was held outside the Capitol on August 23 and included members of Open Carry Texas and Gun Owners of America.[30]

Other groups—ideological groups—have a broader focus than a particular issue or set of policy issues. Both liberal and conservative ideological groups operate in Texas politics. For example, Americans for Democratic Action is a liberal political organization that advocates for progressive policies and works for social and economic justice. One of its counterparts, the Texas Conservative Coalition, promotes limited government, individual liberty, the free enterprise system, grassroots involvement by voters, and the election and accountability of conservative candidates and legislators. Two other groups that fall within this category are the American Civil Liberties Union (ACLU) of Texas (which advocates for the civil rights and liberties of state citizens) and the Texas Christian Coalition (a purely political organization composed of pro-family Americans who identify, educate and mobilize Christians for effective political action through elections, public presentations, leadership training programs, education of timely issues and legislation, and peaceful protests).

Other Types of Interest Groups in Texas

The groups mentioned above are not exclusive to the political process in Texas. A number of other types of groups seek to promote their particular agendas. Government interest groups— which represent federal, state, and local government agencies, and other members of the government who are both elected and other chosen—also organize for the purpose of influencing public policy. State and local governments are becoming strong organized interests as they lobby the federal government for **earmarks** (funds that an appropriations bill designates for a particular purpose within a state or congressional district) or other public monies or solicit funding from charitable foundations for a vast array of state and local programs. Focused Advocacy and the Texas School Board Association are examples of government interest groups in Texas.

Other such groups include social groups such as the Texas Public Interest Research Group (which focuses on healthy living choices, recycling programs, safer marketplace choices for consumers, and greater accountability in government) and the Log Cabin Republicans of Texas (the state affiliate of the nation's original and largest organization representing LGBT conservatives and straight allies who support fairness, freedom, and equality for all Americans).

Ethnic Interest Groups Racial and ethnic groups are advocacy groups established along cultural, ethnic, or racial lines by an ethnic group for the purposes of influencing not only state and national domestic policy relating to those groups and their members but also the country's foreign policy affecting homelands of group members with which they identify.

Ethnic interest groups, such as the National Association of Colored People (NAACP), represent historically ignored or marginalized ethnic groups of people who have suffered historical discrimination on many levels. The federal and state governments have attempted to address and remedy historic discrimination as far back as the early 1800s, and significant

progress has been made on this front. Gone are the days when poll taxes, among other voting restrictions, severely hindered the ability of ethnic minorities, and specifically African Americans, from wielding any political influence through the electoral process. While many civil rights successes should be acknowledged and celebrated, Texans must also acknowledge that the absence of these blatant discriminatory practices does not mean that other, more systemic and unaddressed types of discrimination (e.g., stereotyping, bias, and profiling) against various ethnic groups in the state no longer exists.

Gender-Based Groups Gender-based groups are typically outspoken and very public political advocacy groups. For example, the National Women's Political Caucus–Texas is a nonpartisan organization committed to increasing the number of women elected to public office and appointed to public policy positions. National Organization for Women–Texas generally works to eliminate discrimination and harassment in the workplace, schools, the justice system, and all other sectors of society. It is also vigorously involved in securing abortion, birth control and reproductive rights for women, ending all forms of violence against women, and eliminating racism, sexism and homophobia. Concerned Women of America–Texas, however, a group which claims to promote Biblical values and constitutional principles through prayer, education, and advocacy, seeks to impact the state's culture through education and public policy. Men in Texas may become members of The National Center for Men, which seeks to educate the public about the adverse effects of sex discrimination, advocates for men's equality rights, and counsels men and women from a male-positive point of view). In addition, the Men's Story Project (MSP) seeks to strengthen social norms around the world that support healthy masculinities, prevent violence, eliminate racism, and fight for gender justice.

Faith-Based Organizations The number of faith-based organizations engaged in religious lobbying or religion-related advocacy has increased roughly 500 percent in the past four decades. Among the most well know of these groups is the Family Research Council. Texas Values, a state affiliate of the Family Research Council, works with state legislators, local government officials, and community leaders to encourage and initiate pro-family policies. Its members are specifically interested in advocating for their core beliefs in the sanctity of human life and in the traditional institution of marriage.

Free Rider Problem

There is, however, one striking disadvantage from membership in a large interest group—the free-rider problem. A **free rider** is a person who chooses to not join or contribute to an interest group that represents his or her interests. As a result, the individual enjoys the benefits of membership usually procured by the time, effort, energy and financial resources of a larger group without paying the costs. This phenomenon typically occurs when membership in the interest group is optional, not mandatory (e.g., public television is funded and produces programming for people to watch whether they contribute or not).[31]

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6.4: Texas Interests Groups- Tactics, Financing, and Influence

Texas interest groups use a wide variety of techniques to attempt to influence public policy, including lobbying, grassroots organizing, research, and supporting candidates in Texas. Interest groups engage in a number of techniques to advance the goals of the group and influence public policy. Those activities typically include lobbying, grassroots organizing, persuasion campaigns, supporting and financing candidates and parties during elections, and litigation.

Lobbying

Lobbying refers to any method by which interest groups attempt to influence government officials. Lobbyists represents an interest group before some member of the government or the bureaucracy, are usually compensated for doing so, and are required to register with the government in which he or she lobbies, whether state or federal. They are the direct, public representatives of interest groups who attempt to influence government officials and the decisions and policies they make.

Access Lobbyists must seek and gain "permission, liberty, or ability to approach or communicate,"[32] called **access,** with members of the Texas legislature and executives in the bureaucracy to be effective. Sam Rayburn, the Texas Democrat who had the longest run as speaker of the U.S. House of Representatives—seventeen years—famously refused all meals from both lobbyists and taxpayers alike to avoid that influence. But lobbyists must gain access to provide information to public officials that they hope will convince those officials to vote or act in a manner favorable to the group's interest. In doing so, they offer specialized expertise in a particular area that legislators lack. All of these officials come to depend on lobbyists for information. In addition, lobbyists communicate with elected and other public officials in different ways, influencing government appointments, including conducting formal presentations, issuing press releases, testifying before a committee or a government agency, writing memoranda and policy papers, sending letters, emails and notes, scheduling face-to-face meetings, entering into coalitions with other interest groups, and engaging in informal discussions, even over the meals or drinks Rayburn reviled. A lobbyist who is valuable to policymakers provides credible information, makes persuasive arguments, establishes good relationships with public officials, and enjoys a solid reputation will generally have greater access to, and have greater sway of, those he or she wishes to influence.

Revolving Door Lobbying also gives rise to what political scientists have called the *revolving door*. The term **revolving door** refers to the movement of high-level employees from public- sector jobs to private-sector jobs and vice versa. Because of this revolving door between the two sectors, many legislators and regulators who previously promulgated laws and implemented policy then become lobbyists and consultants for the industries they once legislated and regulated. Former legislators who become lobbyists who participate in the revolving door contend that they are capitalizing on their expertise rather than their network connections. They also argue that having specialists within private lobby groups and running public departments ensures a higher quality of information when making regulatory decisions.

Regulatory Capture Critics, however, claim that the revolving door necessarily results in *regulatory capture*. In politics, **regulatory capture** is defined as a corruption of authority that occurs when a politician, a policymaker, or a regulatory agency is diverted away from serving the public interest to serve some other influential commercial, ideological, or political interest or industry.[33] When this occurs, detractors claim regulatory agencies may become dominated by the industries or interests they are charged with regulating. The result is that an agency, charged with acting in the public interest, instead acts in ways that benefit the industry it is supposed to be regulating rather than in the public interest.[34]

Grassroots Organizing and Social Media

Another form of lobbying that has been used more frequently in recent years is grassroots organizing. **Grassroots organizing** to influence legislation involves the lobbyist's mass mobilization of the public around a legislative issue. The public's support or opposition is manifested by overwhelming contact with their legislators and other officials regarding an issue. Facebook, Twitter and email have all helped lobbyists spread messages and generate public opinion that is aligned with those lobbyists quickly and efficiently. Because public officials are often sensitive to the opinions of voters, if a group can demonstrate that public opinion supports a particular position or the public is willing to contact officials to express their views, officeholders will respond favorably

because they want to enhance their chances of being re-elected.[35]

Persuasion Campaigns

In addition to social media from the grassroots level, any interest groups run media campaigns to persuade the public to support their position on issues. Some of this persuasion occurs during election campaigns when groups create and publicize advertisements intended to help a political candidate or political party achieve victory. In addition, interest groups work beyond these campaigns to educate others about the groups' way of thinking and persuade them to adopt the groups' priorities.

Groups have developed sophisticated public relations operations to communicate their positions. They use **targeted mass mailings** (mailings that spotlight a specific audience profile and which speak directly to those individual prospects through specifically crafted, personalized mailers) by mailing pamphlet or other documents to a large list of individuals the group is attempting to influence. In addition, groups regularly use television, radio, newspapers, magazines, and billboards to communicate positions to persuade. Further, just as in grassroots organizing, they use the internet to send messages to the wider public. Finally, interest groups often publish their research-based findings in an attempt to influence not only public opinion but also the policy decisions of lawmakers.[36]

Supporting and Financing Candidates and Parties in Elections

Interest groups are quite active in electoral politics. The activity is generally called **electioneering**—any activity that attempts to persuade people to vote for a particular candidate or particular party that is sympathetic to that group. Groups provide resources for candidates and parties that support those groups. The most noticeable contributions by interest groups to candidates and parties are monetary.

Some interest groups form **political action committees (PACs),** groups specifically created to collect funds from donors and distribute them to parties and candidates who support their issues. PACs are the most important mechanism through which interest groups provide this financial support.[37]

For example, these ten Texas PACs support their favored candidates in the 2020 elections had collectively amassed more than fourteen million dollars by mid-2019:

- **Texans for Lawsuit Reform** ($3,686,075) – dedicated to "keeping abusive lawsuits from killing jobs and slowing down our economic growth." [38]

- **Texas Leads PAC** ($3,001,000) – supports incumbent Republicans for reelection.
- **Texas Forever Forward** ($2,500,388) – created to "support elected officials, candidates, emerging leaders and ideas that will promote a message that is optimistic, inclusive, entrepreneurial and future-focused"[39]
- **ActBlue Texas** ($1,373,929) – dedicated to helping elect Democrats and thus, turn Texas "blue."
- **Associated Republicans of Texas** ($1,077,693) – created for the purpose of "maintaining the Republican majority in the Texas Legislature and strengthening the future of Republicans in Texas."[40]
- **Annie's List** ($757,418) – dedicated to helping elect progressive, pro-choice Democrat women.
- **Texas Association of Realtors PAC** ($604,171) – seeks to elect candidates who promote homeownership and protect private-property rights.
- **Gulf States Toyota Inc. PAC** ($572,290) – supports those in power (incumbents) and advance the interests of its corporate shareholders rather than a particular ideological position.
- **Ryan Texas PAC** ($448,058) – supports Republican statewide officeholders and Republican candidates.
- **Texas Land Title Association PAC** ($434,192) – non-partisan special interest PAC that lobbies the Texas legislature for property tax and school finance reform.[41]

There is no limit on the amount of money PACs may contribute to Texas statewide and legislative elections. In addition, state-based interest groups run advertisements, finance party and candidate research, provide volunteer workers, organize rallies, host fundraisers, and independently run advertisements for or against candidates. The Texas Association of Realtors PAC raised nearly two million dollars during the 2018 election cycle, donating $1.2 million to candidates.[42] Texans for Lawsuit Reform, a group that advocates for civil justice reform, donated $1.3 million, spread over 100 different candidates.[43]

Litigation

When opportunities to politically influence legislators and policymakers dwindles, special interest groups often turn to the courts for relief. Sophisticated, well-financed interest groups are skillful and proficient at using the court system as a means of achieving their goals. Groups turn to **litigation**—the process of resolving disputes between individuals, organizations, and government entities by filing a lawsuit with a court of law that is empowered to hear a case that ultimately will result in a desired judgment—to pursue their causes. Interest
groups use litigation as a tactic to pursue their causes and the interests of their members.

In addition, litigation is used by some groups to sue other groups they oppose. Interest groups also seek to influence the outcomes of cases in which they are not parties through the use of amicus curiae (Latin for "friend of the court") briefs. An ***amicus curiae* brief** is a persuasive document intended to bring to the attention of a court relevant matters not already brought to its attention by the parties. Such briefs may be of considerable help to the court. It also allows interest groups that are not direct parties to a lawsuit litigation to advocate for their causes without having to spend significant amounts of money already paid by those who are proper parties to the litigation. Thus, litigation is often much less expensive than electioneering and lobbying and less political, but it is also more time-consuming since the conclusion of litigation (through the appeals process) can require a significant amount of time and is subject the whims and opinions and judges and juries that may not share the sentiments of a litigious group.

Interest groups also seek to influence the court system by engaging in activities to affect the appointment or election of judges. Typically, the most popular, uncompromising, and outspoken groups are very active in supporting or opposing particular judicial nominees or candidates.[44]

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6.5: Regulation of Interest Groups in Texas

Compared to other states, Texas places very few limits on the tactics, activities, and financial dealings of interest groups, but it places a high value on transparency.

The Texas Ethics Commission

The Texas Ethics Commission (TEC), referred to at the beginning of this chapter, was created by a state constitutional amendment to the Texas Constitution to prevent the kind of corruption that transpired in the Sharpstown scandal. It was established in 1991 to supervise and support the application of various public ethics laws. The TEC consists of eight members. Four members are appointed by the governor, two by the lieutenant governor, and two by the speaker of the House. Appointees must be selected equally from lists recommended by the Republican and Democratic members in the Texas House and Senate. No more than four members may be from the same political party.[45]

The TEC is constitutionally empowered to recommend the compensation for members of the Texas legislature, the lieutenant governor and the speaker of the Texas House of Representatives. For example, it recommends salary increases for members of the legislature, the lieutenant governor, and the speaker of the house, and it also sets *per diem* rates for state officials..

The Texas Ethics Commission: Political Contributions and Expenditures

The TEC requires disclosures from public officials and those seeking to influence their elections and decision-making. The TEC provisions, among others, require a person who exceeds either a compensation or expenditure threshold to register with the TEC and to file periodic reports of lobbying activity It oversees the filing of financial disclosure statements for government officials and the filing of campaign finance regulatory statements by candidates and citizens who engage in political speech related to campaigns and elections. The TEC provisions, among others, require a person who exceeds either a compensation or expenditure threshold to register with the TEC and to file periodic reports of lobbying activity. Lobbyists who receive more than $1000 per calendar quarter for lobbying or spend "more than $500 in a calendar quarter to benefit a state officer or employee (or his or her immediate family) when the expenditures are made to communicate to influence legislation or administrative action" must register with the TEC."[46] Registration is $750 per year, with a reduced fee for lobbyists representing non-profit groups. Registered lobbyists file monthly activity reports listing their clients and specific expenditures. Gifts to officials are limited to $500 per year, and any gift with a value of more than fifty dollars must be reported. Fines of up to $10,000 and criminal punishments as high as a second-degree felony may be pursued against violators.[47]

An interest group in Texas can give an unlimited amount of money to a political campaign, but it must disclose its contributions to the TEC. Candidates and parties who receive contributions must also disclose that information. A PAC's treasurer must file contribution and expenditure reports twice a year, with additional reports due prior to any election in which it is involved.

Politicians have demonstrated an unquenchable thirst for campaign funds. In most cases, the sources of the money raised by politicians and political groups are publicly disclosed. Candidates, parties, and political action committees—including the super PACs that are allowed to accept unlimited amounts of money—all report the names of their donors to the Federal Election Commission on a regular basis.[48] However, through the years, national and state legislators have passed laws that have provided themselves with additional avenues for satisfying the need to accumulate funds. More recently, candidates for public office in Texas are consistently relying upon **dark money** (spending meant to influence political outcomes where the source of the money is not disclosed) to finance their campaigns.[49]

When PACs choose not to reveal their sources of funding, they are considered dark money groups. For example, politically active nonprofits such as 501(c)(4)s are generally under no legal obligation to disclose their donors even if they spend to influence elections. These nonprofits and shell companies (an inactive company specifically designed and used as a vehicle for these kinds of financial maneuvers) may give unlimited amounts of money to super PACs. While super PACs are legally required to disclose their donors, some of these groups are effectively dark money outlets when the bulk of their funding has come through shell companies and nonprofits such that it cannot be traced back to the original donor.[50] Since the Supreme Court's ruling in ***Citizens United v. FEC***[51] in 2010 (which allowed unlimited political contributions by corporations, labor unions, and associations and

ultimately prompted an exponential increase in politically active nonprofit organizations), dark money groups have spent roughly one billion dollars.[52] That amount accounts for nearly one-half of outside spending in elections.[53]

Non-Financial Duties of the TEC

Since 1991, the TEC has also been charged with a number of other tasks that are not directly related to money. It provides advisory opinions (nonbinding interpretations of certain laws), and regulates and monitors lobbyist registration.[54] Most of its administrative, supervisory, regulatory, advisory, investigative, and enforcement powers and responsibilities are authorized by various provisions of the Texas Ethics Code, the Texas Government Code, and Texas Administrative Code, all of which were propounded by the state legislature.[55] The TEC is also charged with producing educational materials and providing training programs for other groups affected by laws administered by the TEC.[56]. Specifically, the TEC provides detailed information about the following topics:

- resources relating to advertising, campaign finance, deadlines, laws and regulations, legislative reports, lobbying, local filing requirements, and personal financial statements;
- court opinions, statutes and codes enacted by the legislature, and Commission rules and regulations;
- filing requirements for candidates, campaigns, and lobbyists;
- training programs for government officials and the public; and
- forms and instructions for by candidates and their campaign treasurers, political action committees, political parties, individuals, caucuses, and lobbyists.

The TEC also educates candidates, the public, and others about the prohibitions against bribery, honorarium, and gifts and defines acceptable uses for political contributions and expenditures for political advertising. The monumental tasks conducted by the TEC are achieved mostly through the use of its website (https://www.ethics.state.tx.us/).

Local Regulation

Some local governments in Texas can place additional restrictions on interest groups. The City of Houston requires everyone who lobbies their city government to register—defining lobbying as either spending or being paid at least $200 in a calendar quarter or $800 in a calendar year "to influence municipal legislation or administrative action on behalf of the employer by whom the person is compensated or reimbursed."[57] To register as a lobbyist in the City of Houston costs $291.87 per year and is due along with a registration form within five working days of the lobbyist's first communication with a city official.[58] After registering, lobbyists in Houston file quarterly reports detailing any spending on communications with city officials, from the cost of buying breakfast for the mayor to the price of a ticket to take a city council member to a ballgame. As of October 2019, there were 130 people registered as lobbyists with the City of Houston.

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6.6: Conclusion

Interest groups have become firmly entrenched within the Texas political landscape. Their influence is both certain and controversial. Today, many observers of Texas politics continue to express concerns about the influence of groups and the value of pluralism as a mode of governance. Nevertheless, interest groups offer an important and unique linkage between Texans' varied interests and public policy. This linkage does not diminish the important of other linkages, such as free and open elections. But the linkage offered by interest groups is unique in that it allows citizens to exert influence by interacting with one another and collectively attempting to influence the decisions and actions of the government. Interest groups are attributed with promoting political and social policies that have significantly improved the lives of literally millions of Texans. At the same time, the relationship between interest groups and government actors can become uncomfortably close and, for critics, utterly corrupt. While we recognize this possibility, we also acknowledge that—like everyone else in a democracy— interest groups must remain free to advocate on behalf of their own agendas.

Key Terms and Concepts

501(c)(3) organization – an organization that qualifies as a public interest group that enjoys tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

***amicus curiae* brief** - a persuasive document intended to bring to the attention of a court relevant matters not already brought to its attention by the parties.

Citizens United v. FEC – The landmark case in which the Supreme Court allowed unlimited political contributions by corporations, labor unions, and associations. **"dominant/complementary" state** – a state in which factors are more than favorable to the existence and overwhelming influence of special interest groups.

dark money –spending meant to influence political outcomes where the source of the money is not disclosed

earmarks - funds that an appropriations bill designates for a particular purpose within a state or congressional district.

electioneering - any activity that attempts to persuade people to vote for a particular candidate or particular party that is sympathetic to that group.

free rider problem - a situation where individuals are able to consume a good without paying.

grassroots lobbying - an approach that asks the general public to contact legislators and government officials concerning issues at hand, as opposed to conveying the message to the legislators directly.

interest group - an organization of individuals with shared goals that attempts to influence governmental decisions and public policy through a variety of activities.

litigation - the process of resolving disputes between individuals, organizations, and government entities by filing a lawsuit with a court of law that is empowered to hear a case that ultimately will result in a desired judgment --- to pursue their causes.

lobbying - any method by which interest groups attempt to influence government officials.

"open shop" state – a state in which employees in the state maintain the option of whether or not to join a certified union.

political action committee (PAC) – a group specifically created to collect funds from donors and distribute them to parties and candidates who support its issues.

public interest group – a group that promotes the broad, collective good of citizens and consumers.

revolving door - the movement of high-level employees from public-sector jobs to private- sector jobs and vice versa.

targeted mass mailings - mailings that spotlight a specific audience profile and which speak directly to those individual prospects through specifically crafted, personalized mailers) by mailing pamphlet or other documents to a large list of individuals the group is attempting to influence.

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6.7: Critical Thinking Questions

Question 1

Given the fact that literally millions of dollars are annually spent by registered lobbyists and special interest groups and, similarly, that the number of registered lobbyists in the state continues to increase, consider whether the expenditure limits be increased, decreased or remain the same and explain how you have come to that conclusion.

Feedback: available at the end of this section.

Question 2

Some political action committees (PACs) are easily recognizable as supporters of certain political parties. But some of the PACs you see may attempt to hide an obvious affiliation by adopting a name that somewhat disguises their political inclinations.

Take a look at Transparency USA's[3] website (https://www.transparencyusa.org/tx/pacs) that illuminates the breadth, amounts, and influence of financial lobbying in Texas. You will notice the identity of political action committees (PACs) in the state and their respective contributions and expenditures.

Before venturing deeper into the website, pick and record 10 of those PACs and attempt to make an educated guess about which party they favor. Then, explore the PACs more extensively to determine whether your guesses were correct. Briefly discuss your results and impressions.

Feedback: available at the end of this section.

Answers

Question 1

It is widely believed that money that lobbyists once spent exclusively in Washington D.C. is being redeployed to fight battles in state capitals. State lobbyists contend they offer a valuable service to legislators and government officials, providing information and raising questions about pending legislation or executive action. Those opposed to restrictions on lobbying argue that the First Amendment guarantees the right of citizens to petition the government for redress of grievances and that placing restrictions on lobbyists impairs this right. Lobbyists also assert that regulations requiring them to name specific contacts made with legislative or congressional staff have a chilling effect and weaken relationships that have been built up over many years.[1]

Critics argue that many lobbyists are nothing more than influence peddlers who seek political and legislative favors for their clients and that regulations are needed to preserve the democratic process and to ensure the legitimacy of government. Supporters of strict regulation of lobbyists contend that regulation is needed to prevent special interests from controlling the political process, to ensure ethical behavior on the part of lawmakers and government officials, and to enhance the public's confidence in the government. Proponents for change concede that lobbyists have a place in the legislative process, but they advocate for measures that prevent lobbyists from improperly using money and favors to influence legislators and their staffs. And they point to recent court decisions that tend to support the reasonable regulation of lobbying activity.[2]

The perception that lobbyists and the interest groups they represent have corrupted the political process has led to state and federal legislation that regulates lobbyists. Texas is among those states. In its *Lobbying in Texas --- A Guide to the Texas Law* (), the Texas Ethics Commission (TEC) sets forth new thresholds that applied to all lobby registrations and lobby activities reports. These changes meant that the dollar thresholds for the requirement to register as a lobbyist and the itemization of certain expenditures in lobby activities reports were increased. For example, a person who makes lobby expenditures that exceed $780 (an increase from $500) or whose compensation or reimbursement exceeds $1,560 (an increase from $1,000) in a calendar quarter must now register as a lobbyist. In addition, the itemization threshold for gifts reported on the lobby activities report was increased from $50 to $90. Further, Chapter 305 of the Texas Government Code requires a person who crosses either a compensation or expenditure threshold to register with the Commission and to file periodic reports of lobbying activity. These provisions became effective January 1, 2020. Nearly 2,000 lobbyists registered with the TEC in 2020.[3]

1,2. American Law and Legal Information. *Lobbying: Should Lobbyists Be Strictly Regulated?* (2020).

3. Texas Ethics Commission. *Lobbying in Texas --- A Guide to the Texas Law* (2020).

Question 2

Answers will vary.

In this chapter, we discussed the differences between political parties and special interest groups. But it is undisputed that interest groups have preferences as to which party controls a majority of seats in the Texas legislature, and this leads them to direct electorally useful money and many other resources to that particular party. In fact, when one considers the nature and amount of resources committed by special interest groups, it is obvious from the overall pattern of donations that these groups clearly favor either one party or the other.

The best financial indicator of an interest group's political party leanings is its contributions to and through political action committees (PACs). PACs are created

to raise and distribute campaign funds to numerous candidates for federal office. They may spend independently for or against candidates and are, hypothetically, not affiliated with any official campaign.[1]

Findings from studies relating to the goals that motivate economic interest groups indicate that despite the fact that PAC donations are "self-interested, materially oriented, and narrowly focused," PACs have a strong ideological orientation and that their actions can be explained, at least in part, by their desire to effect a government that conforms to their ideology --- and more specifically, their interest in influencing legislators who have a strong predisposition to vote for or against a particular piece of legislation."[2]

1,2. Thomas L. Brunell. *The Relationship Between Political Parties and Interest Groups: Explaining Patterns of PAC Contributions to Candidates for Congress*. Political Research Quarterly (2005).

3. Transparency USA. Texas Political Action Committees.

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7: THE TEXAS LEGISLATURE

Learning Objectives

After reading this chapter, you should be able to:

- Describe the structure of the Texas legislature.
- Explain the effect of limitations on the legislature due to its brief and infrequent sessions.
- Assess some of the issues surrounding the demographic composition of the Texas legislature.
- Trace how legislation is considered and enacted.
- Evaluate the issues and controversies around how electoral districts are drawn.

Key Terms and Concepts: bicameral; supermajority; biennial; regular session; special session; single-member district; citizen legislature; constituents; constituent services; bill; joint resolution; concurrent resolution; simple resolution; standing committee; joint committee; interim committee; conference committee; impeachment; speaker of the House; lieutenant governor; chair appointments; floor recognition; pigeonholing; filibuster; veto; line-item veto; apportionment; one person, one vote standard; redistricting; gerrymandering

Each August, Texas has a "tax-free weekend." School supplies, clothes and shoes can be purchased for a few days without the addition of Texas's 6.25 percent sales tax—which is really 8.25 percent in cities like Houston that add an additional percentage point for city government and one for the local transit authority (**Figure 7.1**).



Figure 7.1 On back-to-school weekends in August, facemasks as well as other school-related purchases are exempt from state and local sales taxes. SOURCE: https://gov.texas.gov/first-lady/pos...x-free-weekend.

What about college textbooks? How much are you spending on books this semester? Some of our students are required to buy engineering and science books that retail for $300 or more each semester.

Representative Terry Canales, a Democrat from Edinburg, wants to give Texas college students a break, too. In the 2019 session of the Texas legislature, Representative Canales filed House Bill 21, which would have established two tax-free weeks for college textbooks—one in August, the other in January—right before the beginning of each long semester.[1] The bill was referred to the House Ways and Means Committee, which handles all tax legislation, where it died quietly. Why wouldn't legislators want to let college students save on textbooks?

The Texas legislature operates very differently from the United States Congress in several ways. One of the most important is that the Texas Constitution requires the state to have a balanced budget. Accordingly, every bill considered by Texas lawmakers comes

with a price tag called a “fiscal note”—the Legislative Budget Board’s best estimate of that bill’s impact on the state treasury. As it turns out, exempting college textbooks from the sales tax during the weeks most of them are purchased would cost the state more than thirty million dollars a year, and would have cost local governments another nine million dollars.[2] Bills that cost the state and local governments money have a tough time getting votes because legislators know that lost revenue means either reducing government services or finding another source of funding to replace that lost revenue.

Representative Canales remains undeterred, however, having filed the same proposal as H.B. 174 for the Texas legislature’s 2021 session.

7.1: Structure of the Texas Legislature

7.2: Membership in the Texas Legislature

7.3: Role and Responsibilities of the Texas Legislature

7.4: Leadership and Organization of the Texas Legislature

7.5: How a Bill Becomes a Law in Texas

7.6: Other Players in the Legislative Process

7.7: Issues and Controversies - Redistricting and Representation

7.8: Conclusion

7.9: Critical Thinking Questions

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1. H.B. 21 by Canales, https://capitol.texas.gov/BillLookup...=86R&Bill=HB21

2. Fiscal Note for H.B. 21, https://capitol.texas.gov/tlodocs/86...l/HB00021I.htm)

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7.1: Structure of the Texas Legislature

Article 3 of the Texas Constitution establishes the legislative branch of the Texas government. Like the U.S. Congress, Texas's state legislature comprises both a Senate and a House of Representatives (**Figure 7.2**). However, as the example of the back-to-school weekend shows, the Texas Constitutions puts different rules in place for the legislature, including a balanced budget rule, which prohibits spending that exceeds estimated revenue. The drafters of the Texas Constitution also believed in limiting governmental power as a means of protecting individual liberties. Therefore, the framers of the Texas Constitution purposely created a distinctive structure that makes the passage of legislation difficult.



Figure 7.2 The Texas legislature meets in the Texas state capitol building in Austin. Construction around the capitol is limited to preserve the view of the building. The building was designated a national historic landmark in 1986. SOURCE: Andrew Teas CC-BY

Bicameral Structure

The Texas legislature has a **bicameral** (two chambers) system with a Senate and a House of Representatives, a structure modeled on the two chambers of the U.S. Congress. Together, they constitute the Texas legislature. Every U.S. state except Nebraska has a bicameral legislature. One of the advantages of a bicameral system is that it subjects the budget and any potential legislation to different points of view in that legislation must bass both the House and the Senate. The 150-member House is a large, raucous group of legislators who are constantly running for reelection. The thirty-one-member Senate, sometimes described as a "country club," is a smaller group of legislators who know each other well, and who serve for longer terms of office. Additionally, the Texas Senate traditionally adopts rules requiring a **supermajority** of senators to vote—a fixed number greater than half—to bring proposed legislation up for debate, a measure designed to promote consensus and compromise but which also makes controversial legislation harder to pass.

Regular Sessions

Judge Gideon Tucker famously said in 1866, "No man's life, liberty or property are safe while the legislature is in session."[3] The drafters of the Texas Constitution would agree with this sentiment. They were wary of government power and thus set limitations on when the state legislature can meet. The Texas legislature is restricted to **biennial** sessions, which means a **regular session** will be held only in odd-numbered years beginning on the second Tuesday in January, and for no more than 140 days.

The flow of legislation within this short time window is further restricted by a constitutional provision prohibiting bills from being considered on the floor of the House or Senate during the first sixty days of a regular session unless designated as emergency measures by the governor. For the 2021 session, Governor Abbott designated five emergency items: expanding broadband internet access; discouraging local governments from reducing police department budgets; reforming the bail system; election

integrity; and providing lawsuit protection to protect businesses from pandemic-related lawsuits.

The sixtieth day occurs in mid-March, leaving barely two months for floor debate before a series of end-of-session rules begin to shut down the process in early May. Legislation that doesn't pass during each session of the legislature is "dead." Many of the same proposals will be refiled in future sessions, but a bill must complete the entire process during a single legislative session.

Special Sessions

Between the legislature's regular sessions, Texas governors may require legislators to meet in **special sessions**. While some states allow the legislature to call itself into special session under certain circumstances, Texas gives that power solely to the governor. Each special session is limited to thirty days, although the governor may call as many sessions as he or she desires. Following the legislature's 1989 session, Governor William Clements called six special sessions to deal with matters ranging from workers' compensation to public school finance reform. During a special session, only bills dealing with subjects specified in the governor's proclamation to convene the special session may be considered, though the governor can—and frequently does—add items to this list during the session.

The most recent special session was called by Governor Abbott in 2017 to avoid the shutdown of certain government agencies under Texas's Sunset law, which automatically phases out most state agencies after twelve years unless specifically renewed by the legislature. This is not intended to eliminate agencies but to force legislators to reexamine them every few years and to consider whether they should be structurally changed or even combined with another agency. Governor Abbott declared that "because of their [the legislature's] inability or refusal to pass a simple law that would prevent the medical profession from shutting down, I'm announcing a special session to complete that unfinished business."[4] Abbott was referring to the Texas Medical Board, which required renewal, as did several other mental health licensing boards. A controversial "bathroom bill," intended to bar transgender individuals from using the bathroom of their choice, was also on the list of items to be considered in the special session. However, the House did not send the bathroom bill to the Senate during the special session, thus insuring it did not pass.

Districts

Every state representative and senator represents a **single-member district**—one specific geographic area of the state (**Figure 7.3** and **Figure 7.4**). Districts are supposed to be roughly equivalent in population, which means the geographic size of each district varies widely. Representative Eddie Morales Jr. represents a West Texas district along the Mexican border that covers twelve counties, includes both Big Bend and the Guadalupe Mountains, and stretches from Eagle Pass to New Mexico. While Morales's district is larger than several U.S. states, you could walk from one end of Representative Gene Wu's southwest Houston district to the other in a couple of hours, with a Starbucks stop in between. The difference can be seen in the kinds of legislation each has introduced. Representative Morales has introduced a bill to designate State Highways 118 and 166 as a historic highway named the Davis Mountain Scenic Loop Highway. Wu has introduced a bill to increase the penalty for porch pirates, given the increase in online shopping since the COVID pandemic and the rise of packages stolen from the porches of private homes.

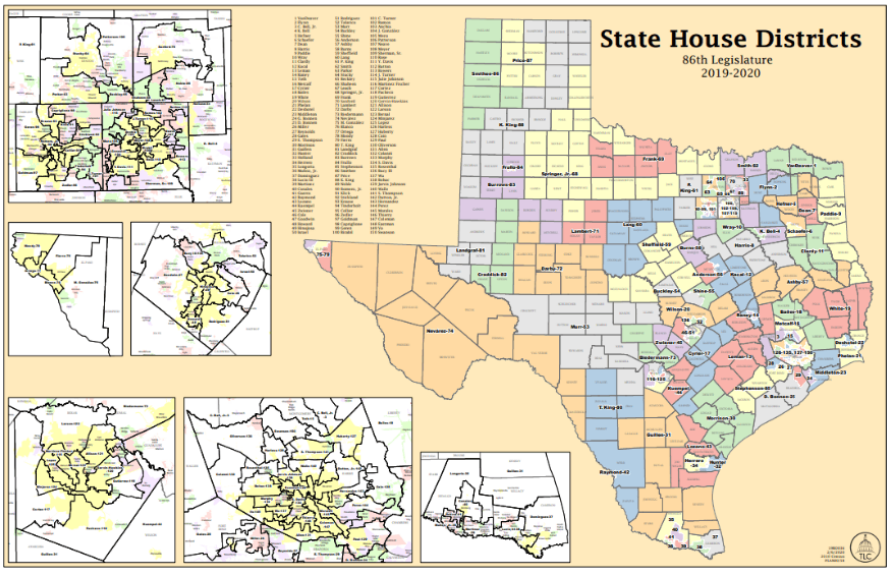


Figure 7.3 Texas State House District Map. Texas has 150 state representative districts. Each district has a population of 167,637, as counted by the 2010 Census. The orange district along the western border is Representative Morales' district. Representative Wu's district in Harris County is too geographically tiny to show on this map. Following the 2020 Census, the population of a state house district will be close to 200,000 people.

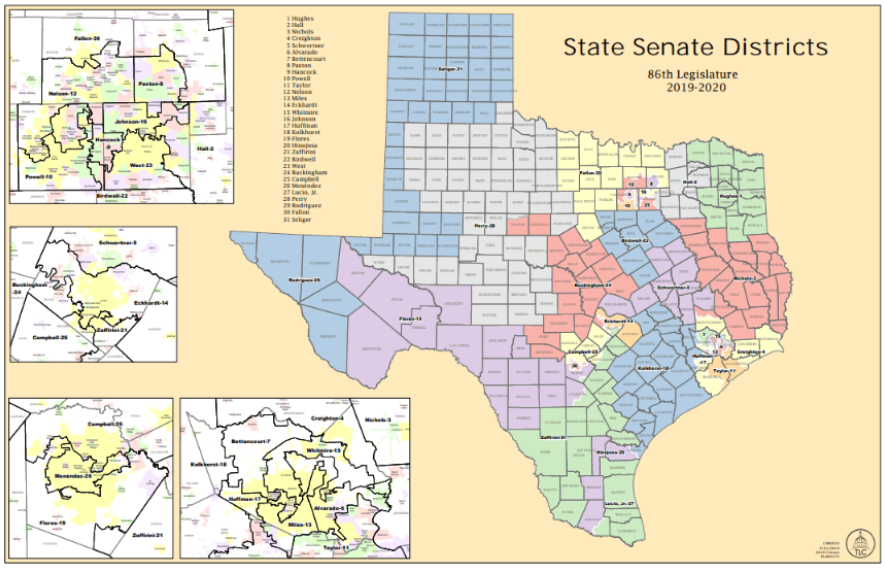


Figure 7.4 Texas State Senate District Map. Texas has thirty-one state senate districts. Each district has a population of 811,147, as counted by the 2010 Census—a number that will grow to approximately 950,000 after the 2020 Census.

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3. Gideon J. Tucker, *Final Accounting in the Estate of A.B.*, 1 Tucker 248 (N.Y. Surr. 1866). Tucker was parodying a historic declaration from the Magna Carta (1215): "No man shall be deprived of the free enjoyment of his life, liberty, and property, unless declared to be forfeited by the judgment of his peers, or the law of the land."

4. Greg Abbott, as quoted in Patrick Svitek. "Gov. Abbott calls special session on bathrooms, abortion, school finance, " *Texas Tribune*, June 6, 2019, https://www.texastribune.org/2017/06...-announcement/.

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7.2: Membership in the Texas Legislature

Drafters of the Texas Constitution envisioned a **citizen legislature**—a system in which ordinary citizens would gather in Austin for a limited time every other year, draft a budget for state government, make whatever changes in the law were absolutely necessary, and get out of town. Their views on politicians could have been summed up by *Game of Thrones'* George R.R. Martin: "Politicians were mostly people who'd had too little morals and ethics to stay lawyers."[5] In conjunction with this assessment, the Texas legislature is a "low professional" or part-time legislature (thirty-eighth out of the fifty states[6]), meaning most legislators do not make a living as a professional politician. These conclusions are based upon a number of measurements relating to the session frequency (annual or biennial), session length (full-time or part-time, number of session days, and the existence of special sessions), individual legislator pay, the percentage of open seats, the percentage of incumbents who face primary opponents and major party opposition, the number of legislative chamber committees, the amount of state-financed research, the existence and strictness of ethics laws, the existence of term limits, and the ideological spectrum of the legislature.[7]

Accordingly, requirements for holding office are slim.

Requirements for Texas House of Representatives

To be qualified to serve in the Texas House of Representatives, you must be:

- a U.S. citizen;
- a resident of Texas for two years;
- a resident of their district for twelve months;
- at least twenty-one years old.

Representatives are elected to a two-year term, with no term limits. Representative Tom Craddick, a Republican from Midland, was first elected in 1968, and was just reelected to his twenty-seventh term in the November 2020 election.

Requirements for Texas Senate

To be qualified to serve in the Texas Senate, you must be:

- a U.S. citizen;
- a resident of Texas for five years;
- a resident of their district for twelve months;
- at least twenty-six years old.

Texas senators serve four-year terms with no term limits. Senator John Whitmire was first elected to the Texas Senate in 1982, after serving five terms in the Texas House of Representatives.

With four-year terms, the Texas Senate is able to stagger its members' terms so that- about half of the Senate membership is elected every two years. After senate districts are redrawn at the beginning each decade, the Senate is divided randomly into two classes, with one class having a re-election after two years and the other having a re-election after four years. This process ensures that at least half the Senate will generally have served at least one previous term. ***Compensation***
Legislative pay in Texas is abysmally low. State legislators in Texas make $600 per month, or $7,200 per year, plus a *per diem* (per day) of $221 for expenses during the regular and any special session. The *per diem* is considered a compensation payment to legislators in consideration for all services rendered throughout their terms, regardless of how many days they actually attend the session. For the regular session (140 days), the *per diem* adds $30,940 to a legislator's salary, with the total compensation amounting to $38,140. Legislators are expected to pay their expenses out of their *per diem*, however, and the cost of traveling to and from Austin and maintaining a residence there during legislative sessions can be expensive.

While the pay for serving in the Texas legislature is not great, the benefits are impressive. Legislators are entitled to the same health insurance coverage as any other state employee and can pay to add their spouse and family to their health insurance plan at a discounted
rate. Interestingly, many legislators with families write a check to the state each month for insurance coverage, as the cost of

adding their families to their state insurance exceeds their legislative salary.

The retirement benefits of legislative service are substantial. Texas legislators who serve at least eight years qualify for a lifetime pension beginning at age sixty. Legislators who serve at least twelve years can begin receiving their pension at age fifty.

Perks and Protections

Texas legislators are given some specific constitutional protections to help allow a free and open debate on public policy issues. Article 3, Section 21 says bluntly: "No member shall be questioned in any other place for words spoken in debate in either House."[8] Additionally, Section 14 says "Senators and Representatives shall, except in cases of treason, felony, or breach of the peace, be privileged from arrest during the session of the Legislature, and in going to and returning from the same."[9] State legislators have long been offered special license plates beginning with "S O" (state official), presumably to facilitate this privilege. While some legislators display these proudly, others have found the risk of a viral social media photo of an imperfect parking job a powerful disincentive.

The Composition of the Legislature

While the framers of the Texas Constitution designated low pay and limited time to encourage the legislature to be the home of part-time politicians and regular citizens, in actuality these limitations mean those elected to office are well-to-do and frequently either self-employed or retired people who can take time off to attend sessions. The statistics on age in **Table 6.1**, for example, reveal that membership in the current Texas legislature is largely over fifty, though incumbency statistics make it harder to determine just how old lawmakers were when they were first elected to office.

Description	House Members	Senate Members	Total
Gender			
Male	111	21	132
Female	38	10	48
Total	149*	31	180
Party affiliation*			
Democrat	67	13	80
Republican	82	18	100
Total	149*	31	180
Incumbency**			
Incumbents	132**	27	159
Freshmen	16	4	20
Total	148**	31	179
Age***			
Under 30	0	0	0
30-39	16	0	16
40-49	43	1	44
50-59	44	15	59
60-69	29	7	36
70 and over	17	8	25
No response	1	0	1

Table 7.1 Membership Statistics for the 87th Legislature (January 12, 2021 - May 31, 2021)

Gender, party affiliation, and age calculations are based on the membership as of the first day of session: 01/12/2021.

*House District 68 is TBD in a special runoff election on January 23, 2021. Governor's Proclamation, December 28, 2021.

** Incumbent totals include members who served the previous session. Freshman totals include members whose first terms began the first day of session: 01/12/2021.

Not included as incumbent or freshman: Mike Schofield (first served in 84th-85th sessions).

***Age calculations are based on the membership as of the first day of session: January 12, 2021.

SOURCE: texas.gov/sessions/sessionSnapshot.cfm?legSession=87-0.

Demographic Makeup Other statistics might be more relevant. Table 6.1 also shows membership is mostly male. It is also mostly White. Every two years when a new session of the Texas legislature convenes, the *Texas Tribune* posts an article analyzing the demographics of the latest class of lawmakers. Interestingly, the headline, "*...white men are still overrepresented in the Texas Legislature*," never changes.[10]

In the 2021 legislative session, sixty-one percent of the members are White, compared to just forty one percent of the Texas population. Women hold just twenty-seven percent of House and Senate seats, though that number has increased by more than a third in the past four years. Of the 181 legislators, just forty-eight are women—most of them Democrats. The *Tribune* notes that the total number of Republican women in the House in 2021 is equal to the number of legislators named "John."[11]

The racial profile of the legislature is similarly unbalanced. The 2021 Texas legislature is made of up four Asians, nineteen Blacks, forty-six Hispanics and 110 Whites. A representative slice of Texas by race would predict nine Asians, twenty-two Blacks, seventy-two Hispanics and seventy-four Whites.[12]

According to the *Texas Tribune*, "That's largely a function of the Republican dominance of the Capitol and the dearth of diversity in the party's ranks. All but five of the 100 Republicans in the Legislature are non-Hispanic White people."[13]

Partisan Makeup For more than a century following the adoption of Texas's current constitution in 1876, the Texas legislature was controlled by Democrats. The few Republican members—mostly from large cities and the German-immigrant heavy Hill Country—were useful to the mostly conservative Democratic leadership, which supported an arrangement of bipartisanship that has been a long-time tradition of the Texas legislature. As the Texas Democratic Party followed the national party's shift to the left in the 1960s and 70s, the partisan balance of the legislature began to shift. Conservative Democrats like future governor Rick Perry began to switch parties, and traditionally Democratic conservative voters began to elect Republicans.

By 2002, the Texas House and Senate had Republican majorities. Republicans held ninety-nine House seats in 2010—one shy of two-thirds of the House membership. This was a significant number as the supermajority was two-thirds (that is, twenty-one of the thirty-one senators) before 2015. As large Texas cities have grown more populous and more Democratic, the partisan trend has begun to shift back, with Democrats' share of the House rising from fifty-one in 2010 to sixty-seven in 2021. As mentioned earlier in the chapter, the Texas Senate reduced the supermajority required to bring a bill to the floor from two-thirds to three-fifths to five-ninths in 2021, reductions designed specifically to allow the eighteen Republican members of the Senate to bring up a bill without any votes from Democratic members.

In addition, the Texas Freedom Caucus, a nine-member group of conservative House members, has tried to push Republican House members away from the traditionally moderate, pro-business Republican politics of previous decades toward a more combative style of ideological policymaking, including legislative matters that stress cultural issues such as the "bathroom bill" mentioned earlier in the chapter.

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5. George R.R. Martin, editor, *Ace in the Hole*, Wild Cards, vol. 6 (New York: Bantam Books, 1990).

6. Matthew Bangcaya, Thomas DiGiuseppe, Blake Dodd, Christopher Gruning, Rebecca Parma, and Johannah Roberson. *Professionalization and Effectiveness in State Legislatures* (Capstone Report: 2015), http://hdl.handle.net/1969.1/187046.

7. Bancaya et al., *Professionalization*, http://hdl.handle.net/1969.1/187046.

8. Texas Constitution, Art. III, § 21, https://statutes.capitol.texas.gov/D....3/CN.3.21.htm

9. Texas Constitution, Art. III, § 14, https://statutes.capitol.texas.gov/D....3/CN.3.14.htm.

10. Alexa Ura and Carla Astudillo, "In 2021, white men are still overrepresented in the Texas Legislature," *Texas Tribune,* Jan. 11, 2021, Ura and Astudillo, "White men overrepresented,"
https://apps.texastribune.org/featur...epresentation/.
https://apps.texastribune.org/featur...epresentation/.

11. Alexa Ura and Darla Cameron, "In increasingly diverse Texas, the Legislature remains mostly white and male," *Texas Tribune*, Jan. 10, 2019, https://apps.texastribune.org/featur...-demographics/.

12. Ura and Astudillo, "White men overrepresented," https://apps.texastribune.org/featur...epresentation/.

13. "What does the Texas House of Representatives do?" Frequently Asked Questions, Texas House of Representatives, https://house.texas.gov/resources/fr...ked-questions/.

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7.3: Role and Responsibilities of the Texas Legislature

The key responsibility of elected officials is the passage of laws that represent the interests of those who elected them, their **constituents**. “The duties of the legislature include consideration of proposed laws and resolutions, consideration of proposed constitutional amendments for submission to the voters, and appropriation of all funds for the operation of state government,” as is stated on the website for the Texas House of Representatives.[14] heir only mandate, as put forth by the Texas Constitution, is approval of a balanced state budget, and, as the textbook tax example at the beginning of this chapter shows, proposed legislation comes with a price tag, a “fiscal note,” provided by the Legislative Budget Board, in keeping with the balanced budget rule.

Despite the limitations built into the structure of the Texas legislature, legislators have obligations as well that take up their time when they are not in session. **Constituent services** include non-legislative functions such as answering inquiries about policies, listening to the concerns of residents, researching legislation, and facilitating cooperation among state agencies, local government, businesses, and nonprofit organizations. **Figure 7.5** shows a bipartisan meeting with the Texas Association of Business, for example. This is in addition to the ceremonial attendance and speech-making at important events, not to mention political fundraising and campaigning for re-election.



Figure 7.5 State Senator Carol Alvarado (D-Houston) and former State Representative Sarah Davis (R- Houston) conduct a joint presentation on education reform at a Texas Association of Business meeting in 2019. SOURCE: Andrew Teas CC BY

Bills

A **bill** is the draft of a proposed change to statutory law; statutory laws are laws presented to and passed by the legislature. (Other laws include constitutional laws, based on the U.S. and Texas constitutions, common laws that invoke accepted standards in a community and judicial decisions, and regulatory laws that are regulations imposed by the governor or a regulatory body.) House members and senators can introduce bills on any subject during the first sixty calendar days of a regular session. If a bill is introduced in the House, it is called a House Bill and given a number. The 2019 Canales bill discussed at the beginning of this chapter was House Bill 21, or H.B.21. If introduced in the Senate, it is called a Senate Bill and given a number. S.B. 317, for example, was introduced by Senator Bryan Hughes of Mineola in 2019. This bill allowed feral hogs—a problem concerning the hogs that were descendants of pigs brought to Texas as food by early settlers and which had now become a menace—to be killed without a hunting license. Governor Abbott signed S.B. 317 into law in 2019.

Any bill increasing taxes or raising money for use by the state must start in the House of Representatives. After sixty days, the introduction of any bill other than a local bill—a bill that only affects the representative’s own local district—or a bill related to an emergency declared by the governor requires the consent of at least four-fifths of the members present and voting in the house or four-fifths of the membership in the Senate.

There are several types of bills that can be introduced, including local, general, special (for specific exemptions from state law), or bracket (which applies to, for example, a specific geographic area or a specific area targeted for economic development). The most common are general and local. A general bill is one that is applied to everyone equally, like the one for increasing the penalty for porch pirates introduced by Representative Wu. An example of a local bill is the one introduced by Representative Morales for renaming a highway in his district. Two thousand nine hundred and fifteen bills have been introduced in the Eighty-Seventh Texas Legislature.[15] Few will make it into law.

Resolutions

Just as bills are used to propose a change to state law, a proposed change to the state constitution is proposed in the form of a **joint resolution**, which can be filed in either the House or the Senate. A joint resolution must be approved at least two-thirds of the memberships of each chamber—at least 100 state representatives and at least twenty-one senators. The governor has no veto opportunity (the opportunity to reject the bill)—once approved by the House and Senate, a joint resolution is filed with the secretary of state, who places it on a statewide election ballot for consideration by Texas voters, who must approve it by majority vote. In 2021, Senator Judith Zaffirini, a Democrat from Laredo, has introduced Senate Joint Resolution 13, which would amend the Texas Constitution to rescind the state's observance of Daylight Savings Time. Voters in 2019 approved nine of the ten proposed constitutional amendments passed by the legislature, rejecting only a proposition to let more than one small town use the same elected city attorney.

Like joint resolutions, **concurrent resolutions** reflect the will of both the House and Senate but unlike joint resolutions cannot be used to propose a change to the state constitution. Concurrent resolutions (H.C.R if filed in the House, S.C.R. if in the Senate) are often used to express the official opinion of the legislature on a federal issue before Congress. Concurrent resolutions are required for the legislature to grant itself permission to adjourn for more than three days during a regular session—seen frequently during the early weeks of the 2021 session as lawmakers deal with the ongoing coronavirus pandemic and are required to grant a plaintiff permission to sue the State of Texas. In the 2021 session, H.C.R. 21, by Representative Ron Reynolds, a Democrat from Rosenberg, would urge Congress to raise the federal minimum wage to fifteen dollars per hour.

Simple resolutions can be adopted by either the House or Senate (H.R. in the House, S.R. in the Senate) without participation by the other chamber and have no force of law. These are used to recognize birthdays, anniversaries, and victories by local high school sports teams, and as memorial resolutions to commemorate a deceased official or important constituent. In 2021, S.R. 37 by Senator Sarah Eckhardt, whose district includes the University of Texas at Austin, is a memorial resolution recognizing the recent passing of legendary Texas Longhorn football coach Fred Akers.

Non-Legislative Powers

In addition to its legislative responsibility to introduce bills and resolutions, the Texas legislature has non-legislative powers that include counting election returns for governor and lieutenant governor, investigating problems as they arise, and appropriating funds for specific agencies, which is part of their approval of the state budget. But one of the most significant non-legislative powers of the Texas legislature is **impeachment**, the process by which an elected official can be officially accused of misconduct, removed from office, and prohibited from future elected service.

Impeachment indicates charges are brought against an officeholder; it does not indicate that the officeholder is guilty The House alone can bring impeachment charges against a statewide officer, which would result in a trial before the Texas Senate. It is the same impeachment system that operates at the national level. The Texas Constitution gives the House the power to decide what constitutes an impeachable offense. Impeachment charges have only been successful twice in Texas's history.[16] Judge O.P Carrillo spent three years in jail for income

tax fraud after his impeachment in 1975, and Governor James "Pa" Ferguson was impeached in 1917 for bribery, embezzlement, and selling pardons. Though he had resigned in a failed attempt to avoid impeachment charges, he was convicted and prohibited from running again for governor in Texas. After his conviction, his wife Miriam Amanda "Ma" Ferguson ran for governor to vindicate the family name. On the campaign trail, she announced "two governors for the price of one," and Pa Ferguson was the main speaker at her rallies.[17] She was elected governor twice, first in 1924 and again in 1932. She was the first woman elected as governor of Texas; the second by a hair in the U.S. with Wyoming's Nellie Tayloe Ross being sworn in on January 5 and Ma Ferguson following on January 20.[18]

How Legislators Make Voting Decisions

Unlike in the U.S. Congress, decision making in the Texas legislature relies on much more than political party. The most common advice new legislators hear from veteran members is "always vote your district." The Republican State Senator Drew Springer from North Texas described it this way, "When you get to Austin, you always vote your district. It is not always up and down party lines. A lot of the challenges we face are not Republican versus Democrat, they are rural vs. suburban or rural vs. urban."[19] Though legislators often choose up sides based on party membership, they can also divide into urban versus rural on transportation issues, districts where water is plentiful versus those where it is not on water policy and coastal versus interior on hurricane resiliency and flooding issues.

Voting one's district is about more than just who lives in the district—it is about who votes in the district. Older citizens outvote younger ones. Homeowners outvote renters. If you are ever tempted to think voting does not matter, watch the legislature discuss a bill that would benefit elderly homeowners. Rarely does a session pass without serious attempts to increase Texas's generous menu of property tax exemptions for homeowners aged sixty-five and older.[20]

While less of a factor in the state legislature than in Congress, partisanship has become an increasingly important and complex source of pressure on legislators' voting decisions. Most legislators see more political risk from a challenge in their own party primary than from a general election opponent. Accordingly, Republicans and Democrats alike are wary of allowing a potential opponent to outflank them from the more extreme end of the partisan spectrum. Republicans face a particular quandary today as they try to anticipate the mood of Republican Party primary voters in the post-Donald Trump era.

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17. Tony Pettinato, "First Woman Governor: Nellie Tayloe Ross," First Two Women Governors, Nellie Tayloe Ross and Mirian "Ma" Ferguson, genealogybank, Nov. 4, 2016, https://blog.genealogybank.com/first...y-elected.html; "Ma Ferguson Sworn In as Governor," Texas Landmarks Legacies, vol. 8, no. 20, Jan. 20, 125, https://howdyyall.com/Texas/TodaysNe...m?GetItem=1530.

18. Drew Springer, quoted in Jimmy Potts, "Springer Gives Legislative Update to Olney Voters," Olney Enterprise, Nov 3, 2016, https://www.olneyenterprise.com/news...e-olney-voters.

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20. Ara Jones, **"**Texas House speaker Dade Phelan announces diverse leadership slate," *Austin American-Statesman*, Feb. 4, 2021, https://www.statesman.com/story/news...ts/43932740001/.

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7.4: Leadership and Organization of the Texas Legislature

If you studied Congress in your American Government class, you probably remember that the U.S. House and Senate operate on a strictly partisan basis. The party with a majority of the membership controls everything in that chamber—the presiding officer, all committee chairs and subcommittee chairs and a voting majority on every committee and subcommittee. While Texas legislators are elected on partisan ballots, and partisanship certainly plays a role in the work of the legislature, the Texas House and Senate are organized on a non-partisan basis, though the increasingly intense partisanship of the last few decades has eroded some of this traditional bipartisanship, especially in the Senate.

The two most powerful members of the Texas legislature are the **speaker of the House**, who is elected by House members and who presides over the House of Representatives, and the **lieutenant governor**, who is elected by the people of Texas and who is head of the Senate. They wield their power through **chair appointments** for committees and **floor recognition** of members that allow them to introduce legislation for debate. Standing committees in the Texas legislature have near total control over the flow of legislation to the floor on the subject areas under their jurisdiction. Unlike the U.S. Congress, where committee chairs are always in the same party as the majority elected to the U.S. House or the U.S. Senate—for example, of the Senate majority leader is a Republican all the chairs will be Republican as well—the chairs of Texas House and Senate committees have traditionally reflect the general partisan balance of either the House or the Senate—a House speaker presiding over a membership that is forty-five percent Democratic will name Democrats to chair roughly forty-five percent of the committees— and not just minor ones. This tradition has been disrupted in the Senate, however, where under the leadership of conservative Lieutenant Governor Dan Patrick only one chair of a Senate committee is a Democrat.

Speaker of the House

When the House convenes on the first day of each regular session, members elect one of their own to serve as speaker of the House. The speaker is the presiding officer of the House of Representatives, running the chamber's floor debate. The speaker rules on parliamentary matters and is the final authority on procedural challenges that can used by members to derail legislation during floor debate.

The speaker also has tremendous control over the leadership and membership of committees, limited only by **seniority rules**, which give members priority in appointment to substantive standing committees based on their length of service in the House. Under the house rules, members request committee assignments at the beginning of each session. Roughly half the membership of most committees is determined by seniority, the rest at the speaker's sole discretion. The speaker also has control over the chair and vice chair selection for each

An unofficial but important job of the speaker is to protect the membership from divisive votes that could imperil their reelection, and to represent the House in the unavoidable competition with the Senate, especially toward the end of the legislative session. Members of each chamber tend to become annoyed with the other, especially toward the end of the session, for delaying action on bills popular in one chamber but not on the other. The speaker will occasionally "send a message" to the senate by delaying the referral of a bill passed by the senate to a house committee, thus delaying action in an overt way. During a special session in 2017, Speaker Joe Straus refused to even refer the Senate's "bathroom bill" to a committee for consideration, saving House members from a vote on a bill that would likely prove unpopular with constituents of both Republican and Democratic House members.

In 2021, a new speaker was elected with bipartisan support, Republican Dade Phelan of

Beaumont. Phelan won with the support of a women's equity bloc after pledging "an equitable distribution of women in leadership."[21] Phelan appointed five committee chairs and fourteen vice-chairs to women, and fourteen chairs and twenty-one vice-chairs to Black, Hispanic or Asian members of the House.[22] In addition, Phelan named fourteen Democrats to chair committees, approximately forty-one percent, which is one more chair than they had in the 2019 legislature.[23] Phelan announced, "The State of Texas has arrived at a pivotal moment in its history—one that requires us as lawmakers to work with one another, build consensus, and leverage the diverse strengths and backgrounds of those within our chamber to confront the unique challenges ahead."[24]

Democratic Representative Terry Canales of Edinburg, discussed at the beginning of the chapter, will continue to chair

Transportation, a powerful committee in a geographically large state that spends billions on transportation projects.[25]

Lieutenant Governor

Like the vice-president of the United States, the lieutenant governor is an executive branch official, not a member of the Senate. Unlike the vice-president, however, the lieutenant governor has tremendous power over the day-to-day operations of the Senate. The lieutenant governor is chosen by Texas voters in a statewide election and serves a four-year term. Like the speaker of the House, the lieutenant governor appoints chairs and vice chairs of each committee and determines committee membership. As just mentioned, unlike Speaker Phelan, Lieutenant Governor Patrick named only one Democrat as chair, Senator John Whitmire of Houston.

Losses in the 2020 election for Republicans meant that Republicans in the Senate were reduced to eighteen. They still are in the majority, and they used a simple majority vote along party lines to lower to eighteen the supermajority number of votes needed to bring a bill to the floor.[26] Previously a three-fifths supermajority, nineteen votes, were needed. This means Republicans can bring legislation to the floor without any Democratic support. But it also means that if any Republican does not agree, Republicans will still need a Democrat on board.

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22. Cassandra Pollock, “Speaker Dade Phelan shakes up Texas House with new chairs on key committees,” *Texas Tribune,* Feb, 4, 2021, https://www.texastribune.org/2021/02...mittee-chairs/.

23. Dade Phelan, “Speaker Dade Phelan Announces Committee Assignments for 87th Legislature,” Press Release, Texas House of Representatives, Feb. 4. 2021, https://house.texas.gov/news/press-r...print/?id=7284.

24. Pollock “Phelan shakes up House,” https://www.texastribune.org/2021/02...mittee-chairs/.

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7.5: How a Bill Becomes a Law in Texas

Once the House and Senate convene at the beginning of each session, and the House elects a speaker, each chamber must adopt rules that will govern its operations. The House and Senate operate differently and have very different rules of procedure—each adopted as a simple resolution by a majority in each chamber. The Texas Constitution provides some rules for both the House and Senate, but most procedural matters are left for the members to decide. Once House and Senate rules are adopted, they are rarely changed, although most rules can be suspended on a case-by-case basis with a supermajority vote.

Only after rules are adopted can the legislature begin considering bills. The steps in the process include (1) introduction; (2) committee action; (3) floor action; (4) conference committee (if necessary) (these steps are repeated in the Senate); and (5) governor's action

Introducing a Bill

A representative or senator often gets an idea for a bill by listening to the people he or she represents and then working to solve their problem. Some bills are suggested by interest groups, often with ties to the legislator's district. A bill may also grow out of the recommendations of an interim committee study conducted when the legislature is not in session. The idea is researched to determine what state law needs to be changed or created to best solve that problem. A bill is then written by the legislator, often with legal assistance from the Texas Legislative Council, a legislative agency which provides bill drafting services, research assistance, computer support, and other services for legislators.

Once a bill has been written, it is introduced by a member of the House or Senate in the member's own chamber. Sometimes, similar bills about a particular issue are introduced in both houses at the same time by a representative and senator working together.

After a bill has been introduced, a short description of the bill, called a *caption*, is read aloud while the chamber is in session so that all of the members are aware of the bill and its subject. This is called the *first reading*, and it is the point in the process where the presiding officer assigns the bill to a committee. This assignment is announced on the chamber floor during the first reading of the bill.

The Committee Process

Most of the real work of the Texas legislature is done at the committee level. The floor of the 150 member House of Representatives (or even the thirty-one member Senate) is not a useful forum for a detailed line-by-line study of potential legislation. Accordingly, the House and Senate are divided into committees of various types.

A **standing committee** is a permanent committee with jurisdiction over legislation dealing with specific subjects. The House Corrections Committee, for example, has exclusive jurisdiction over bills dealing with the state's prison system.

Temporary committees include joint committees, conference committees, and interim committees. A **joint committee** (usually temporary) includes members of both the House and Senate, and generally examine policy issues rather than individual bills. The 2019 session saw the appointment of a joint advisory committee to oversee the Texas Infrastructure Resiliency Fund, a source of funding to improve critical infrastructure following the unprecedented destruction caused by Hurricane Harvey in 2017. A **conference committee**, consisting of five senators and five representatives, resolves the differences between a House and Senate-passed version of one specific bill. An **interim committee** studies a specific policy issue between regular legislative sessions.

The chair of each committee decides when the committee will meet and which bills will be considered. The House rules permit a House committee or subcommittee to meet: (1) in a public hearing where testimony is heard and where official action may be taken on bills, resolutions, or other matters; (2) in a formal meeting where the members may discuss and take official action without hearing public testimony; or (3) in a work session for discussion of matters before the committee without taking formal action (**Figure 7.6**). In the Senate, testimony may be considered and official action may be taken at any meeting of a Senate committee or subcommittee.



Figure 7.6 State Representative Barbara Gervin-Hawkins (D-San Antonio) explains a bill to the House Criminal Jurisprudence Committee in April 2019. SOURCE: Andrew Teas CC BY.

If you have ever watched a congressional hearing on CSPAN, you may have noticed that testimony is by invitation only, with witnesses chosen carefully by the majority party to support its chosen narrative. Texas House and Senate Committees allow anyone to testify on any bill, with hearings occasionally lasting all night to make sure everyone has a chance to speak.

A House committee or subcommittee holding a public hearing during a legislative session must post notice of the hearing at least five calendar days before the hearing during a regular session and at least twenty-four hours in advance during a special session (**Figure 7.7**). For a formal meeting or a work session, written notice must be posted and sent to each member of the committee two hours in advance of the meeting or an announcement must be filed with the journal clerk and read while the House is in session. A Senate committee or subcommittee must post notice of a meeting at least twenty-four hours before the meeting.



Figure 7.7 Senator Brandon Creighton (R-Woodlands) at a Committee Hearing in 2019. SOURCE: Andrew Teas CC BY

After considering a bill, a committee may choose to take no action or may issue a report on the bill. Many bills die in committee, sometimes referred to as **pigeonholing**. An unofficial but important job of the committee chair is to help members avoid the embarrassment of a public vote to kill their bill, and to protect members from having to cast that vote. When the chair sees that the committee members don't like a bill, it is generally just left pending or referred to a subcommittee that will never meet. If the committee wants to advance a bill to the floor, the committee report, expressing the committee's recommendations regarding action on a bill,

includes a record of the committee's vote on the report, the text of the bill as reported by the committee, a detailed bill analysis, and a fiscal note or other impact statement, as necessary. The report is then printed, and a copy is distributed to every member of the House or Senate.

In the House, a copy of the committee report is sent to either the Committee on Calendars or the Committee on Local and Consent Calendars for placement on a calendar for consideration by the full House. In the Senate, local and noncontroversial bills are scheduled for Senate consideration by the Senate Administration Committee. All other bills in the Senate are placed on the regular order of business for consideration by the full Senate in the order in which the bills were reported from senate committee. A bill on the regular order of business may not be brought up for floor consideration unless the Senate sponsor of the bill has filed a written notice of intent to suspend the regular order of business for consideration of the bill.

Floor Debate

When a bill comes up for consideration by the full House or Senate, it receives its second reading. The bill is read, again by caption only, and then debated by the full membership of the chamber (**Figure 7.8**). Any member may offer an amendment, but it must be approved by a majority of the members present and voting to be adopted. The members then vote on whether to pass the bill. The bill is then considered by the full body again on third reading and final passage. A bill may be amended again on third reading, but amendments at this stage require a two-thirds majority for adoption. Although the Texas Constitution requires a bill to be read on three separate days in each house before it can have the force of law, this constitutional rule may be suspended by a four-fifths vote of the House in which the bill is pending. The Senate routinely suspends this constitutional provision in order to give a bill an immediate third reading after its second reading consideration. The House, however, rarely suspends this provision, and third reading of a bill in the House normally occurs on the day following its second reading consideration.



Figure 7.8 State Representative Dan Huberty (R-Kingwood) argues for an education reform bill on the House floor in 2019. SOURCE: Andrew Teas CCBY.

In either house, a bill may be passed on a voice vote or a record vote. In the House, record votes are tallied by an electronic vote board (**Figure 7.9)** controlled by buttons on each member's desk (**Figure 7.10**). In the Senate, record votes are taken by calling the roll of the members.



Figure 7.9 The results of floor votes in the Texas House of Representatives are displayed on this board at the front of the Chamber. While the speaker is a member of the House and is entitled to cast a vote on any measure, the presiding officer by tradition typically votes "present" as a sign of deferring to the judgment of the House membership. SOURCE: Andrew Teas CC BY.



Figure 7.10 Texas House members cast floor votes electronically from their desks from a panel like this one. SOURCE: Andrew Teas CC BY

If a bill receives a majority vote on third reading, it is considered passed by that chamber. When a bill is passed in the House where it originated, a new copy of the bill which incorporates all corrections and amendments is prepared and sent to the other chamber for consideration. In the second chamber, the bill follows basically the same steps it followed in its chamber of origin. When the bill is passed in the other chamber, it is returned to the originating chamber with any amendments that have been adopted simply attached to the bill.

Debate in the 150-member House of Representatives is more carefully controlled than in the Senate. The author of the bill being debated stands at the “front mic,” in front of the Speaker’s podium, to explain the bill and answer questions. Representatives wishing to question (or argue with) the author speak from the “back mic” near the center of the House Chamber.

Speakers from either mic are generally limited to three minutes. Texas senators each have their own microphone at their desk and, once recognized to speak, may continue for as long as they wish. Toward the end of a session, this can occasionally take the form of a **filibuster**, in which a senator purposely continues speaking for an extended period of time in order to delay action and force a compromise. Unlike a U.S. Senate filibuster, which is strictly a procedural exercise, a filibuster in the Texas Senate is an endurance sport. The filibustering senator must remain standing at his or her desk, speaking on the issue before the Senate. He may yield to answer questions—a crafty senator will arrange in advance for a team of allies on his issue to take shifts asking very

long questions in what is known as a *tag team filibuster*. Several state legislatures allow filibusters, but former Texas Senator Bill Meier, a Democrat from Euless, holds the world's record for a forty-three hour filibuster in 1977. Democratic State Senator Wendy Davis famously spoke for thirteen hours in 2013 against a bill that would require women to get sonograms in order to have an abortion, a bill widely considered to effectively limit a woman's access to abortion. The session ended before a vote could be taken, thus killing the bill, though the bill was passed several days later in a subsequent special session.

Conference Committees and Action on the Other Chamber's Amendments

If a bill is returned to the originating chamber with amendments, the originating chamber can either agree to the amendments or request a **conference committee** to work out differences between the House version and the Senate version. If the amendments are agreed to, the bill is put in final form, signed by the presiding officers, and sent to the governor.

Conference committees are composed of five members from each chamber appointed by the presiding officers. Once the conference committee reaches agreement, a conference

committee report is prepared and must be approved by at least three of the five conferees from each chamber. Conference committee reports are voted on in each house and must be approved or rejected without amendment. If approved by both houses, the bill is signed by the presiding officers and sent to the governor.

In recent decades, the legislature has adopted end-of-session rules to prevent the flood of hastily-conceived legislation commonly seen near the end of each legislative session for much of the state's history. After the 119th day of the 140-day session, House committees can no longer report House bills and joint resolutions. House bills cannot be brought up for initial floor debate after the 122nd day. These restrictions continue to build until, by the last several days, the legislature is restricted mostly to approving or rejecting conference committee reports and passing honorary resolutions.

Governor's Action

Upon receiving a bill, the governor has ten days in which to sign the bill or reject it with a **veto,** Otherwise, the bill become law without a signature. If the governor vetoes the bill and the legislature is still in session, the bill is returned to the house in which it originated with an explanation of the governor's objections. A two-thirds majority in each house is required to override the veto. If the governor neither vetoes nor signs the bill within ten days, the bill becomes a law. If a bill is sent to the governor within ten days of final adjournment, the governor has until twenty days after final adjournment to sign the bill, veto it, or allow it to become law without a signature. Since most bills do not reach the governor until the end of the regular session, this has the practical effect of making a Texas governor's veto unilateral. The last Texas governor to have a veto overridden was William Clements, whose early veto of a bill on hunting and fishing regulations in Comal County was overridden in 1979—and that was the first Texas veto override since 1941.

The Texas Constitution also allows the governor the power of **line-item veto.** This power, which the president of the United States can only envy, allows the governor to veto specific spending item from an appropriations bill without vetoing the entire bill. Some governors have used this power aggressively to remove spending items they considered wasteful or unnecessary. Following the 2019 session, Governor Abbott signed the state budget into law with no line-item vetoes, the first governor since 1955 to sign a budget into law without a single change.

Enactment (When Laws Go Into Effect)

Bills passed by the legislature rarely take effect immediately. Most bills are written to become effective on September 1, which matches the beginning of the state's fiscal year (The state budget covers a period from September 1 after the legislature adjourns through August 31 two years later). The state constitution mandates that bills cannot take effect sooner than ninety days after passage unless two-thirds of each house vote to put the bill into immediate effect. Sometimes, bills are written with an intentionally longer fuse. Texas' "one sticker" law, passed in 2013, which eliminated the state's longstanding requirement that cars have separate registration and inspection stickers, was phased into effect over two years so that existing stickers already paid for by Texans would remain valid.

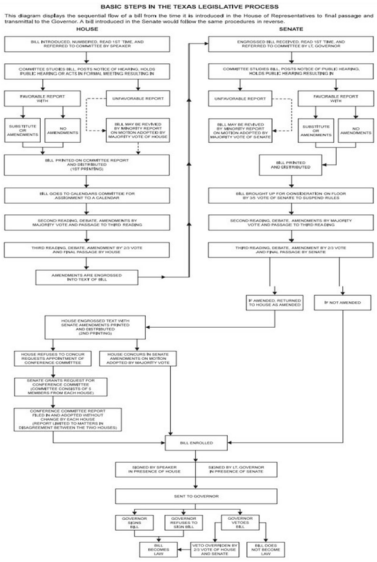


Figure 7.13 Basic Steps in the Texas Legislative Process. This diagram displays the sequential flow of a bill from the time it is introduced in the Texas House of Representatives for final passage and transmittal to the Governor. A bill that is introduced at the Senate would follow the same procedures in reverse. SOURCE: How a Bill Becomes a Law in Texas - OER Commons.

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7.6: Other Players in the Legislative Process

While the governor of Texas has specific legislative powers, and the lieutenant governor— though not a member of the Senate—is the most important individual in the Senate chamber, other state officials and agencies have a role to play as well.

Government Officials and Agencies

The Comptroller of Public Accounts (**Figure 7.11**) plays a vital role in the legislature's constitutional duty to produce a balanced budget each session. Before the session begins, the Comptroller issues an official document called the Biennial Revenue Estimate (BRE), which is the preliminary estimate of the amount of money the state is expected to receive in revenue during the upcoming two-year budget period. This is the legislature's target spending limit as they prepare the biennial appropriations bill. Once an appropriations bill is approved by the legislature, it must be certified by the Comptroller—his official agreement that the state will have enough revenue to pay for everything in the budget. Without his certification, the budget cannot take effect.



Figure 7.11 Texas Comptroller of Public Accounts, Glenn Hegar SOURCE: Andrew Teas CC BY.

Every state agency and official has a role the budget process. While state officials and employees are prohibited from lobbying per se, many take a significant interest in the deliberations over their agency budgets. Executive branch officials often become involved in bills affecting their program environment as well. Though they cannot testify for or against any bill, they frequently testify on proposed legislation as resource witnesses at committee hearings, generally making their opinions clear.

Interest Groups

When a group of lobbyists from an especially well-funded interest group began frequenting a particular section of the House Gallery (the balcony overlooking the House chamber) a few years ago during floor debate each day, cynics began referring the area as the "owner's box" (a reference to the luxury boxes at racetracks where racehorse owners are invited to watch the event). There is an ongoing and spirited debate over the extent to which interest groups influence state legislature, but legislators do depend heavily on interest groups as they make decisions about legislation. This is not necessarily a bad thing. During their 140-day session, legislators will typically consider over 6000 bills on subjects from abandoned vehicles to youth camps. Listening to those whose livelihoods will be most impacted by a proposed change in law is the only way to learn the true impact of the change, and to avoid unintended consequences.

Staff

The Texas Capitol Building is exactly five blocks south of the University of Texas at Austin, which is teeming with smart, young government majors who work cheap. Accordingly, legislators in Texas—part-time employees themselves—have not generally been assisted by long-term, career staffers like their Washington counterparts. Still, young as they may frequently be, legislative staffers can exert a surprising amount of influence. They often control the flow of information and access by constituents and lobbyists, and a staffer with an interest in an issue can make sure that issue gets shuffled to the top of the stack (or to the bottom) as their boss juggles more issues than can be given full attention in the time allowed.

More long-term, career staffers often work for the House Research Organization, the Legislative Budget Board and the Legislative Council, which provide important bipartisan research and legal drafting expertise on complex issues.

Media

Even as the number of daily newspapers in Texas—and throughout the United States—has dwindled, and the number of papers with Austin bureaus has dwindled even further, the non- profit *Texas Tribune* has tried to pick up the slack, providing extensive coverage of the state legislature. The press has traditionally taken no interest in the vast majority of bills considered by the legislature—even those with significant consequences for Texans. When the occasional issue does catch the interest of Capitol reporters, however, the attention can be relentless. In early 2021, following an unprecedented winter storm that interrupted electric power to millions of Texans, media attention examination of the management of the state's electric power grid made it the legislature's most important issue—even in a legislative session with a budget deficit and a contentious redistricting battle awaiting lawmakers.

The Public

Legislators and lobbyists alike frequently opine that any actual constituent carries more weight in the legislature than the best lobbyist. Legislators are in the business of getting reelected. Pleasing constituents is a high priority for legislators, and angering constituents is something to be avoided whenever possible. The legislative process in Texas is remarkably open to ordinary Texans. In non-pandemic years, Texans can generally wander into their state representative or senator's office without an appointment and share their thoughts on an issue with their legislator—or at least to a staff member if the legislator is not available. Before it can become law, every bill receives a public hearing before a House committee and a Senate committee, and anyone can sign up to testify. In Texas, ordinary citizens can play a tremendously important role in the success or failure of individual bills through their testimony at committee hearings and through contact with their elected representative and senator on bills that reach floor debate.

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7.7: Issues and Controversies - Redistricting and Representation

As discussed earlier in the chapter, Texas's thirty-six representatives for U.S. Congress, thirty- one state senators, and 150 state representatives are elected from geographic districts that are roughly equivalent in population. The United States Constitution (Article 1, Section 2) calls for a new calculation of the number of congressional districts in each state every ten years following the U.S. Census, a process called *decennial reapportionment*. At that time, the 435 seats in the U.S. Congress are reapportioned among the fifty states. **Apportionment** is the process by which the U.S. Congress determines how many congress people will represent each state. The boundaries of the congressional districts are then redrawn by state legislatures in accordance with state and federal law such that they are roughly equivalent in population, a process known as **redistricting**. Texas is projected to gain three seats in the U.S. House after the decennial reapportionment of the 2020 Census.[27] t wasn't always so. Previously, election districts in Texas often varied widely in population. Counties elected their representatives, and rural politicians therefore dominated the legislature. These political strongholds were reluctant to redraw boundaries that diluted their political power. But as the economy shifted away from agriculture toward industry, so, too, did populations. People moved to the cities for jobs and urban populations grew dramatically. Voters in those burgeoning cities now felt underrepresented. In the U.S. Supreme Court case of *Reynolds v. Sims* (1964), Chief Justice Earl Warren ruled "legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests."[28] The **one person, one vote** standard established in *Reynolds v. Sims* means that districts have to be roughly equivalent in population, which is how Representative Morales can represent a district bigger than some countries and Representative Wu can represent so small a geographic area that it doesn't even show up on the district map. The legislature is now dominated by those elected from thickly populated urban and suburban areas. Legislative districts today cannot deviate by more than ten percent from the least populous to the most populous district.

The Texas Constitution requires the legislature to redistrict Texas House and Senate seats during its first regular session following publication of each U.S. Census (Article 3, Section 28). Interestingly, the legislature may not have an opportunity to draw districts for 2022 elections at all, since the state constitution specifies that the legislature must draw districts "at its first *regular* session after the publication of each United States decennial census" (emphasis added).. Following the 2020 Census, Texas legislators face an interesting challenge. Delayed by the COVID pandemic, the U.S Census Bureau is not expected to have data available until September 30, giving the state a tight window during which they must draw new districts so that candidates can file for office by the December 13 filing deadline. While the Texas Constitution requires redistricting during the first regular session following publication of the census data, what happens if the census data isn't published before the regular session adjourns? If the legislature cannot agree on redistricting maps, the Texas Constitution transfers that responsibility to the Legislative Redistricting Board (LRB). The LRB is a five-member panel made of the lieutenant governor, speaker of the house, attorney general, comptroller and land commissioner—all of whom are Republicans. Will the LRB end up with jurisdiction for the 2021 redistricting process? This is a question that will likely be settled in court.

Partisan Redistricting and Gerrymandering

Although the Texas Constitution seems to prohibit calling a special session to address redistricting, if congressional districts are not enacted during the regular session and the LRB is not invoked, the governor may do just that. Governor Rick Perry called three consecutive special sessions to address congressional redistricting in 2003 because Republicans had just won the majority in both the Texas House of Representatives and the Texas Senate—the first time the Republicans had won the House in 130 years. Instead of redistricting after the ten-year Census, as was the norm, a controversial plan was undertaken mid-decade specifically to give Republicans an advantage in winning races for the U.S. Congress. The *Killer Ds*, as the group of Texas House Democrats was dubbed, fled to a secret hideout in Oklahoma to avoid voting and thus prevent the two-thirds vote necessary to pass the new map. Another group of Democrats, this time from the Senate, fled to New Mexico. The Republican House Speaker Tom Craddick called for their arrest, but Texas Rangers said they had no jurisdiction across state lines, and the FBI pled the same. Craddick placed the legislature under lockdown so no one else could leave before the vote, and finally, Homeland Security—at the request of the Republican Speaker of the U.S. House, Texan Tom Delay—located the Killer Ds.[29] Ultimately, the Killer Ds' effort failed—they returned—and the new map passed.

Gerrymandering is named for Massachusetts governor Elbridge Gerry, who famously signed a bill creating a wildly shaped district that a local cartoonist thought resembled a salamander. **Gerrymandering** is now used to refer to any attempt to draw oddly shaped districts to favor a specific person or group. Spectrum Local News in San Antonio describes gerrymandering this way:

"Gerrymandering refers to the practice of redrawing voting district boundaries with the intent to favor one party over the other, discriminate against minorities, or, in some cases, maintain the status quo.[30] Gerrymandering has been used in state legislature, including Texas, to favor Democrats, Republicans, rural Texans and members of racial groups. Currently, the Texas legislature continues to be dominated by Republicans, so the Republican Party has the upper hand in redrawing district maps and using these maps simply to protect their colleagues—for example, to avoid "pairing" incumbent legislators into the same new district, forcing them to run against each other in the next election.

Electoral Representation

The impact of partisan gerrymandering can be seen when comparing statewide election results to the partisan balance of Republicans and Democrats in the legislature. In the 2020 election, Texas voters preferred the Republican candidate, Donald Trump, by a margin of 52.1 percent, giving Democrat Joe Biden 46.5 percent of the vote. While that result is about two specific candidates, many would assume that a similar margin of Texans would vote for a state legislator of the same political party as their presidential candidate choice. Yet, with the drawing of districts by a Republican-majority legislature to favor Republican candidates, Republican margins in the Senate (fifty-eight percent) and House (fifty-five percent) are slightly larger.

An analysis from the Associated Press indicates that partisan gerrymandering has had as big if not a bigger impact on the state House and Senate than on the U.S. Congress.[31] F Since the Perry- Delay redistricting of 2003, the boundaries of Texas's congressional districts have largely remained unchanged and had the desired outcome of their Republican cartographers. The majority of representatives sent to the U.S. Congress from Texas in 2004 were Republicans, something that had not occurred since Texas reentered the Union and Union soldiers withdrew from the state after the Civil War. After the 2010 redistricting that trimmed Democratic strongholds but left Republicans intact, a Republican landslide added twenty-four seats to become a supermajority.[32]

Since 2008, backlash against the administration of Barack Obama has brought a strongly ideological conservative shift as well—a shift best represented by the significant influence of the Freedom Caucus today—and this has influenced the political climate of Texas. But since 2003— but even before this turn the composition of the legislature favored White Republican men. This continues to be true despite countervailing demographic trends, particularly from the growth of the Latino population. Texas's current status is one of only six minority-majority states, with just 41.4 percent of the population as non-Hispanic White.[33] While cultural and economic considerations are at play, including low voter turnout, the impact of redistricting on electoral representation cannot be counted out.

This history of partisan gerrymandering in Texas and its repercussions illustrates some of the issues and controversies that have emerged around redistricting. Two main points cannot change: the federal government stipulates that districts must have roughly equal populations (*Reynolds v. Sims*) and also that they must not discriminate on the basis of race or ethnicity (Voting Rights Act of 1965). But lawsuits to the contrary (*Abbott v. Perez,* 2017; *Gill v. Whitford*, 2017; *Benisek v. Lamone*, 2019; and others), and notwithstanding Supreme Court Justice Antonin Scalia's sentiments in which he described partisan gerrymandering as "inconsistent with democratic principles,"[34] the U.S. Supreme Court has not weighed in to oppose the practice.

Texas's gain of two congressional seats after the 2020 Census will bring the state's congressional delegation from thirty-six to thirty-eight, and give Texas forty electoral votes in the next presidential election. If drawing districts in a special session is not possible with the Texas Constitution, but holding an election in districts drawn with outdated census data over a decade ago is likely to violate federal law, will the all-Republican Legislative Redistricting Board be the answer? This begs the question: should politicians draw their own districts at all? Some states, like Arizona, have created a redistricting commission to attempt to remove partisan politics from the redistricting process. Since members of the commission have to be appointed, and there are always partisan pressures on appointment, the commission model may not be a panacea.

Meanwhile, potential candidates preparing to run for the Texas House and Senate, and for Congress in 2022, may not know what district they are seeking until long after a campaign would normally be underway.

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27. Earl Warren, as quoted in "Reynolds v. Sims 'Legislators Represent People, Not Trees,'" *Law Library-American Law and Legal Information*, law.jrank.org, https://law.jrank.org/pages/25431/Re...resent-People- Trees.html.

28. Michael King, "Naked City: Killer D's: Investigate This!, " *Austin Chronicle*, June 20, 2003, https://www.austinchronicle.com/news...-06-20/164603/.

29. Eric Griffey, “A Brief History of Texas Gerrymandering, Spectrum News 1, Oct. 14, 2020, “https://spectrumlocalnews.com/tx/san...errymandering-.

30. Will Wissert, “Analysis: Texas gave House GOP biggest gerrymandering bump,” Associated Press, June 25, 2017, https://apnews.com/article/bfbf76adb...9096ca7ab4cf83.

31. Alexa Ura, “How a decade of voting rights fights led to fewer redistricting safeguards for people of color,” *Texas Tribune,* Sept. 10, 2019, https://www.texastribune.org/2019/09...-voters-color/

32. United States Census, 2018, “QuickFacts Texas, Population Estimates,” July 1, 2019, https://www.census.gov/quickfacts/TX.

33. Matt Ford, “How Texas Republicans Got Away with a Racially Discriminatory Electoral Map” *New Republic,* June 25, 2018, newrepublic.com/article/149357/texas-republicans-got-away-racially-discriminatory-electoral-map; Jamal Greene, *Judging Partisan Gerrymanders Under the Elections Clause*, 114 YALE L. J. 1021 (2005), https://scholarship.law.columbia.edu...holarship/260/.

34. Exit poll results and analysis from Texas,” *Washington Post,* Nov. 9, 2020, https://www.washingtonpost.com/elect...as-exit-polls/.

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7.8: Conclusion

What determines the fate of a bill like Representative Canales' proposal to exempt college textbooks from the sales tax twice a year? How will it compete with six thousand other bills for the time and attention of legislators, and for the millions of dollars in new revenue or budget cuts to offset its cost? The bill will be referred to committees chosen by the House and Senate presiding officers, the chairs of which can decide whether to even set a public hearing to discuss the idea. If public hearings are held, committee members can look forward to testimony from college students, instructors, textbook publishers and others. Consider that many of the legislative staffers that influence the flow of access and information are themselves college students. Legislators might agree with the idea behind the bill but see higher priorities for that money that would benefit their constituents more than a college textbook sales tax exemption. About fourteen percent of Texas voters in the 2020 election were under the age of twenty-nine.

Sixty-four percent were over the age of forty-five.35 Do college students (and possibly their parents) matter enough to warrant that share of the state's scarce tax revenue resources? Are there enough legislators whose districts include colleges and universities to make this bill a priority? The legislative process in Texas is ultimately a reflection of the values of the electorate that chooses the legislators, and of the ability and determination of those who seek to influence the decisions they make.

Key Terms and Concepts

bicameral: legislative system with two chambers, both a Senate and a House of Representatives.

supermajority: a fixed number greater than half, sometimes required to force greater consensus than a simple majority

biennial: something that occurs every other year. The Texas legislature meet only in odd- numbered years beginning on the second Tuesday in January, and for no more than 140 days.

regular session: Texas holds a regular session only in odd-numbered years beginning on the second Tuesday in January, and for no more than 140 days.

special session: legislative meeting called by the governor, limited to thirty days, dealing only with subjects specified in the governor's proclamation to convene the special session or items the governor adds to this list during the session.

single-member district: Every state representative and senator represents one specific geographic area of the state (roughly equivalent in population).

citizen legislature: a legislative chamber composed primarily of citizens who have full-time occupations other than serving as a legislator.

constituents: residents in the district of an elected official.

constituent services: non-legislative functions such as answering inquiries about policies, listening to the concerns of constituents, and helping constituents obtain government services.

bill: the draft of a proposed change to state law presented to the legislature.

joint resolution: Proposed amendments to the Texas Constitution; they require a vote of two- thirds of the entire membership in each house for adoption. Joint resolutions are not sent to the governor for approval but are filed directly with the secretary of state. A joint resolution proposing an amendment to the Texas Constitution does not become effective until approved by a majority of Texas voters in a general election.

concurrent resolution: resolutions that reflect the will of both the House and Senate but which cannot be used to propose a change to the state constitution. Concurrent resolutions are often used to express the official opinion of the legislature on a federal issue before Congress.

simple resolution: resolutions adopted by either the House or Senate without participation by the other chamber and have no force of law. These are used to recognize birthdays and anniversaries and victories by local high school sports teams, and as memorial resolutions to commemorate a deceased official or important constituent.

impeachment: the process by which an elected official can be officially accused of misconduct, removed from office, and prohibited from future elected service.

speaker of the House: elected state representative who House representatives elect to preside over the House of Representatives and who wields power through chair appointment and floor recognition of members.

lieutenant governor: the second-highest elected official in the state and president of the state senate; who wields power through chair appointments for committees and floor recognition of members.

chair appointments; the selection of committee chairs by the speaker of the House and the lietutenant governor

floor recognition; the granting of permission to a member to offer a motion or to speak on any matter by the presiding officer

pigeonholing; killing a legislative proposal at the committee level by declining to take action. **filibuster:** strictly a procedural exercise a senator purposely continues speaking for an extended period of time in order to delay action and force a compromise.

standing committee: a permanent committee in the House or Senate with jurisdiction over legislation on a particular subject area.

conference committee: A committee of five representatives and five senators appointed by the presiding officers of the House and Senate to resolve differences between the House and Senate versions of the same bill.

committee of the whole: a temporary committee made up of all the members of the House or Senate

interim committee: a group of House or Senate members appointed to study a specific issue between the legislature's regular sessions.

joint committee: a committee made up of both senators and representatives appointed to study a specific policy issue.

subcommittee: a subset of a regular committee appointed to work on a specific bill or issue within that committee's jurisdiction.

veto: the governor's power to turn down legislation; can be overridden by a two-thirds vote of both the House and Senate.

line-item veto: enables the governor to veto individual components (or lines) of an appropriations bill.

apportionment; the process by which congress determines how many congressmen will represent each state.

one-person, one-vote: established in the U.S. Supreme Court case *Reynolds v. Sims* ((1964)) means that districts must be roughly equivalent in population.

redistricting: the redrawing of boundaries of congressional districts by state legislatures in accordance with state and federal law.

gerrymandering: any attempt to draw oddly-shaped districts to favor a specific person or group.

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7.9: Critical Thinking Questions

Question 1

The Texas Senate requires a supermajority (three-fifths of the members present) to bring a bill up for debate on the Senate floor. Proponents of this say it creates consensus – forcing bill authors to compromise, resulting in better legislation. Opponents call it anti- democratic, preventing the majority of the peoples' elected senators from enacting policies their constituents want. What do you think?

Answer available at the end of this section.

Question 2

The Texas Constitution allows the governor to veto bills, but lets the state legislature override a veto with a two-thirds vote of both the House and Senate. In fact, though, a governor's veto in Texas can almost never be overridden since he can veto most legislation after the conclusion of the legislative session. Some legislators have proposed amending the Texas Constitution to allow the legislature to call itself into a special session following a governor's vetoes for the sole purpose of considering motions to override vetoes. Is this a good idea?

Answer available at the end of this section.

Question 3

While most state legislatures meet every year, Texas has a biennial legislature, which meets for only a few months every other year. Accordingly, Texas has a biennial budget – a two-year spending plan that begins a few months after the legislature adjourns and covers a period through nearly three years after its adoption. On the one hand, a 2-year budget forces more long-term thinking and stability than an annual budget. On the other hand, budget assumptions are based on guessing the state's needs and available revenues far into the future. Who can predict the price of oil or the amount of expected sales tax revenue the state will collect three years from now? Should Texas continue with 2-year budgeting, or consider changing to an annual budget?

Answer available at the end of this section.

Question 4

In the 2021 session, Texas Legislators will be required to undertake redistricting, the decennial re-drawing of electoral districts for congressmen, state senators, state representatives and members of the State Board of Education. While the Texas Legislature prides itself on being less partisan than their counterparts in the U.S. Congress, redistricting is always a controversial and highly partisan process. Several states have tried to remove redistricting from the political process by reassigning it to a non-partisan redistricting commission. Should Texas consider this?

Answer available at the end of this section.

Answers

Question 1

A good answer to this question will acknowledge the traditional view of this requirement, unique to the Texas Senate, and might contrast it to the simple majority that is required to pass most bills in the Texas House of Representatives.

A good answer will explore the view – held by most senators – that the three-fifths rule keeps bills with only a narrow majority of senate support from passing, and makes it more difficult to pass controversial legislation.. A good answer will also explore the view held by Lieutenant Governor Dan Patrick that, in a democracy, a majority of elected officials chosen by the voters should be able to implement the policy choices that a majority of Texas voters presumably support.

An exceptional answer might mention that until 2015, a two-thirds vote (21 of 31 senators) was required to bring a bill up for debate. Three-fifths is 19 of 31 senators in a body the currently has exactly 19 Republican senators, so the modern rule does not necessarily require bipartisan support.

Question 2

A good answer will discuss the peculiar timing of gubernatorial vetoes in Texas, which rules out any practical opportunity for the legislature to override it. A student may discuss the importance of checks and balances between the legislative and executive branches of state government, and the dangers of allowing any one person the power to nullify a law with no counterbalancing force. The student may also discuss the practical problems and the expense of such a special session, and the dilution of the power of an already weak executive under Texas' plural executive state government design.

Question 3

Possible avenues for a student to explore:

- *It's incredibly hard for legislators to accurately predict revenues and the need for services three or four years into the future, which is what is currently required when one considers the time it takes to gather data and draft a biennial budget.*
- *On the other hand, a biennial budget forces longer-term thinking, something that is sorely lacking from many governmental budgets, notably the federal government budget.*

Question 4

Redistricting is almost certainly the most partisan political activity the legislature does. There is little room for compromise when the primary objective is to maximize the partisan advantage of the majority party in upcoming elections.

A good answer to this would demonstrate a knowledge of what redistricting is, and the relative advantage or conflict of interest of having state legislators draw their own districts. A good answer may also include the inherent conflict of a "non-partisan" redistricting commission, the members of which would have to be selected by a person or group of persons that will certainly almost certainly have connections or allegiance to one of the political parties. An equal number of Republicans and Democrats might lead to an endless series of tie votes, and would further insure that other political parties (Libertarian, Green, etc.) would be unlikely to ever have a voice in the process.

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8: THE EXECUTIVE BRANCH AND THE GOVERNOR IN TEXAS

Learning Objectives

After reading this chapter, you should be able to:

- Explain the structure of the governor's office.
- Assess the roles, responsibilities, and powers of the governor.
- Analyze the advantages and disadvantages of the plural executive in the Texas government.
- Describe the various actors who make up the executive branch.

Mo' Minors, Mo' Problems: Governor Abbott, concerned for the safety of unaccompanied minors entering Texas, tweet blasts President Joe Biden over conditions at the facilities housing these unaccompanied minors. (**Figure 8.1**). Although immigration law is primarily federal, deciding how to handle this type of surge can often also fall on the governor to address.

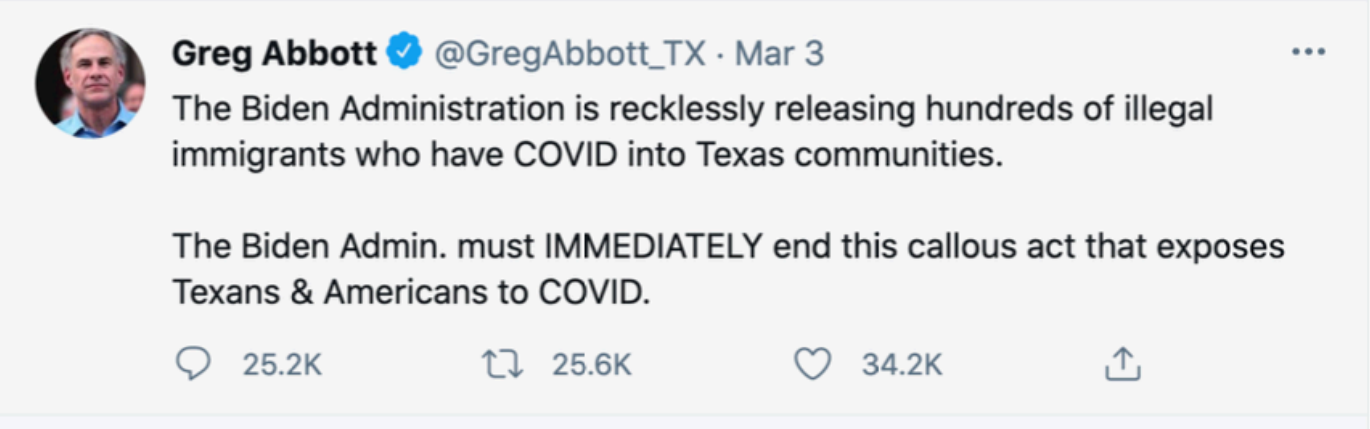


Figure 8.1 Governor Abbott's tweet on minors.

Texas is struggling to find a place for the vast numbers of unaccompanied minors that are crossing the Texas border (**Figure 8.2**). "These sites are a direct result of President Biden's reckless open border policies that are causing a surge in border crossings and cartel activity," Abbott said on March 17, 2021, adding that 11,000 minors have been apprehended crossing the Texas-Mexico border this year alone and that border crossings are at its highest level in two years."[1] Children from many Latin American countries like Guatemala, El Salvador, and Honduras have long crossed the border through Mexico to the reach United States; however, the number of children making the perilous journey alone has recently increased. From concern that some of the children might have the COVID 19 virus, overcrowded facilities, and now the concern that the water in some places is contaminated, it is clear that this a complex policy issue that will likely be moving to the top of Governor Abbott's agenda.



Figure 8.2 Migrants in the custody of the U.S. Border Patrol wait in temporary processing facilities in Donna, Texas. SOURCE: Courtesy Jaime Rodriguez Sr., U.S. Customs and Border Protection Office of Public Affairs.

8.1: So, the Texas Governor Is Like the U.S. President, Right?

8.2: Choose Me! What Does It Take To Be Governor?

8.3: So, What Does the Governor Actually Do?

8.4: The Texas Bureaucracy

8.5: Conclusion

8.6: Critical Thinking Questions

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1. "Abbott: 11K Kids Crossed TX Border This Year; Wants Feds to Let State Interview Them," NBCDFW, upd. March 17, 2021, https://www.nbcdfw.com/news/local/ab...sylum/2581198/.

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8.1: So, the Texas Governor Is Like the U.S. President, Right?

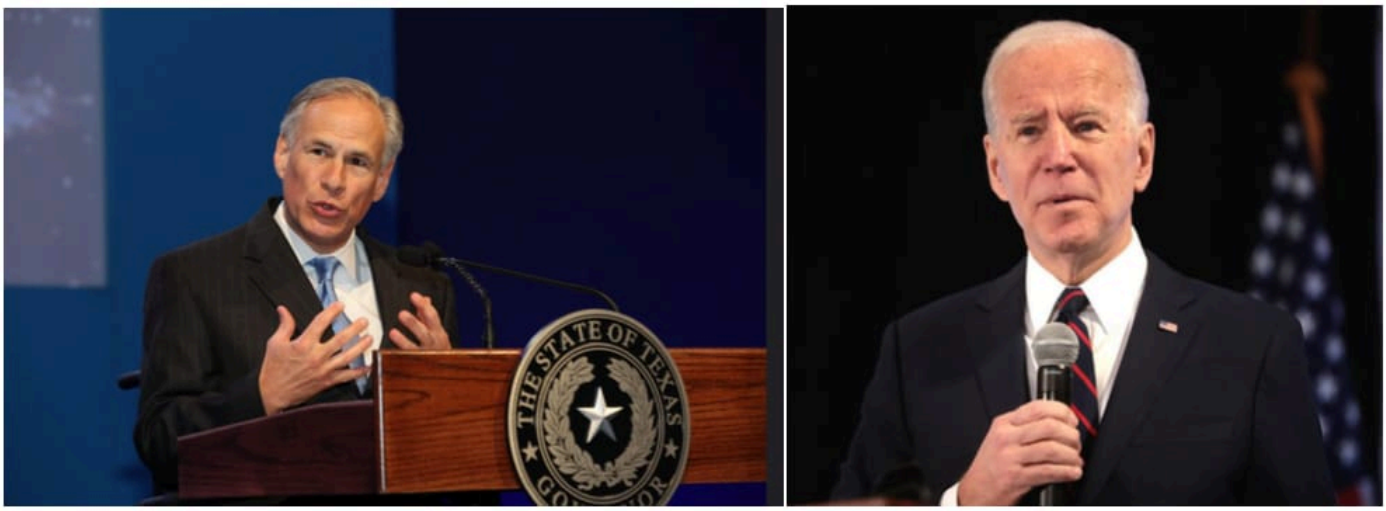


Figure 8.3 Governor Greg Abbott (top); President Joe Biden (bottom). SOURCE: "Greg Abbott, Governor of Texas" by World Travel & Tourism Council is licensed under CC BY 2.0; "Joe Biden" by Gage Skidmore is licensed under CC BY-SA 2.0.

The Texas Constitution was written at a time when concentrated power in the hands of a single state official was viewed with great apprehension. E. J. Davis, the last Republican governor before William Clements was elected in 1979, held office from 1870 to 1874, and his administration was characterized by corruption, scandal, and repression. Consequently, when the Democrat-controlled delegation drafted the 1876 Constitution, the framers reacted against the Davis administration by creating a constitutionally weak governor. The 1876 Constitution remains in effect, even though it has been liberally amended.

Today, the governor still copes with a highly fragmented executive branch that results in a **plural executive**, one in which the governor must share executive power and often compete with five other elected executives, an appointed executive, and elected boards of the Texas Railroad Commission and the State Board of Education. The executive branch also includes a complex system of powerful policymaking bureaucratic entities. The Texas governor is one of seven equally powerful officials who head the executive branch, unlike the U.S. president (**Figure 8.3**).[2]

Ok so they can't all be governor, but they can still make up the executive branch in Texas. One official, the secretary of state, is appointed by the governor. Five others are, in addition to the governor, elected on partisan ballots for four-year terms: lieutenant governor; attorney general; comptroller; agriculture commissioner; and land commissioner. These elected officials are, in theory, directly accountable to the citizenry for their performance and their integrity in office. One of these elected officials is the lieutenant governor and the other four are department heads.

Lieutenant Governor

The current lieutenant governor is Dan Patrick (**Figure 8.4**), who as lieutenant governor presides over the Texas Senate but does not head any executive office (see Chapter 6 on the Texas legislature). The **lieutenant governor** performs as an executive only when the governor is away from the state or upon succession to the governorship.



Figure 8.4 Lieutenant Governor Dan Patrick (elected 2014 and currently serving). From 2007 until his election as lieutenant governor, Patrick represented Harris County's District 7 as state senator in the Texas legislature (2007-2015). SOURCE: https://en.Wikipedia.org/wiki/Dan_Pa...k_(politician).

Attorney General

Along with the governor, the lieutenant governor, and the speaker of the House, the attorney general—Ken Paxton (**Figure 8.5**)—is one of the most powerful officers in Texas government. Although candidates for the position often run on a strong anticrime platform, the work of the office is primarily civil. As the attorney for the state, the **attorney general** and his or her staff represent the state and its agencies in court when the state is a party to a case. The Office of the Attorney General also is responsible for such varied legal matters as antitrust litigation, workers' compensation insurance, organized crime control, and environmental protection.



Figure 8.5 Attorney General Ken Paxton (elected 2014, currently serving). Before being elected attorney general, Paxton served in the Texas legislature, first as the state representative for Collin County's House District 70 (2002-2012) and then as senator for Senate District 8, representing Collin and Dallas counties (2012-2015).

The attorney general's greatest power, however, is that of issuing opinions on questions concerning the constitutionality or legality of existing or proposed legislation and administrative actions. These opinions are not legally binding, but they are rarely challenged in court and thus effectively have the same importance as a ruling by the state's supreme court. Because the attorney

general's opinions are often well publicized, and because the attorney general works with all state agencies, the office is second only to the governor's office in the public recognition it receives. Because the positron is regarded as a stepping stone to the governor's office, attorneys general release favorable publicity about themselves, their agency, and their support groups, often with an eye to possible future election campaigns.

Comptroller of Public Accounts

The current comptroller is Glenn Hegar (**Figure 8.6**). As **comptroller**, he is responsible for the administration of the suite tax system and for performing preaudits of expenditures by state agencies. In addition, as part of the budget process. the comptroller certifies to the legislature the approximate biennial income for the state. The Texas Constitution requires the state to operate under a balanced budget and precludes the legislature from appropriating more funds than are anticipated in state revenues for any biennial period. Since the elimination of the treasurer's office in 1996. the comptroller serves as the state's banker. The merger of the two offices further strengthened the comptroller's office.



Figure 8.6 Comptroller Glenn Hegar (elected 2014, currently serving). He was state senator for Harris County's District 18 from 2007-2014, and state representative from House District 18 from 2003-2007.

The comptroller is also the custodian of all public monies and of the securities in which the state invests or holds in trust. The office also issues the excise tax stamps used to indicate the collection of taxes on the sale of alcoholic beverages and cigarettes in the state. In short, the comptroller collects, safeguards. and invests the state's revenues.

Commissioner of the General Land Office

Only Texas and Alaska entered the Union with substantial public land acreage, and only these two states officials. Law officers are then responsible have land offices. George P. Bush (**Figure 8.7**) is the current commissioner of the General Land Office, first elected to a four year in 2014 and reelected in 2018.



Figure 8.7 Land Commissioner George P. Bush (elected 2014, currently serving) also served as the chairman of the Veteran's Land Board. Bush left the United States Navy Reserve in 2017, having served since 2007, including a 2011 tour in Afghanistan. SOURCE: The Texas State Directory.

As commissioner, Bush administers about 22.5 million Texas acres. This acreage includes four million acres of bays, inlets, and other submerged land from the shoreline to the three-league marine limit (10.36 miles out). The land commissioner's land-management responsibilities include: supervising the leasing of all state-owned lands for such purposes as oil and gas production, mineral development, and grazing (over 14,000 leases); administering the veterans' land program, through which veterans may buy land with low-interest loans backed by state bonds; and maintaining the environmental quality of public lands and waters, especially coastal lands. Like all land commissioners, he must balance environmental interests with land and mineral interests.

Commissioner of Agriculture

Farming and ranching remain important industries in the state, even though only about one percent of the population is engaged in agriculture. The Texas Department of Agriculture, like its national counterpart, is responsible both for the regulation and promotion (through research and education) of the agribusiness industry and for consumer protection, even though these functions may sometimes conflict. For example, requiring that pesticides be safe for workers, consumers, and the environment may be detrimental to the profits of farmers. The diversity of the department's activities (enforcing weights and measures standards, licensing egg handlers, determining the relative safety of pesticides, and locating export markets for Texas agricultural products) further complicates the commissioner's position.

Texas Agricultural Commissioner Sid Miller **(Figure 8.8)** grants amnesty to cupcakes in the following video! Don't worry he includes cakes and pies too. In his typical flamboyant style, Miller reassures parents that the ban on junk food, including cupcakes, is no longer in effect in Texas.[3]



Figure 8.8 Agricultural Commissioner Sid Miller (elected 2014, currently serving) He previously served in the Texas legislature as representative for West Central Texas District 59 (2000-2013).

Secretary of State

The **secretary of state** makes up a part of the plural executive and is the only member of the executive who is appointed. The office of secretary of state was established by Article 4, Sections 1 and 21 of the Constitution of 1876. Ruth R. Hughs (**Figure 8.9**) is the current secretary of state. The secretary of state is appointed by the governor and confirmed by the Senate and serves for four years. Breaking news!! The Secretary of State Ruth R. Hughs resigns effective the end of May 2021 leaving Governor Greg Abbott to appoint his fifth Secretary of State during his time in office.



Figure 8.9 Secretary of State Ruth R. Hugh (appointed 2019, currently serving). She previously served on the Texas Workforce Commission and in the office of the attorney general.

The job of a secretary of state varies from one state to another and even from one country to another. Most of the time this job is out of the public's view, but sometimes events thrust a secretary of state into the public spotlight. Many secretaries of state are involved in the elections of that state. That's the case in Texas. For several months at a time, the office of the secretary of state is very busy preparing for elections. While the actual work of running an election often falls to local governments, secretaries of state are responsible for the outcomes. Those responsibilities include deciding whose vote will count and whose will not.

The other duties of a secretary of state vary considerably. In addition to certifying elections (by verifying the validity of the returns), the other duties of a secretary of state include maintaining records on campaign expenditures; safeguarding the list of lobbyists who register with the state; administering the Uniform Commercial Code; publishing the Texas Register (the official record of administrative decisions, rules, regulations, and announcements of hearings and pending actions); affixing the state seal to proclamations, commissions to office, and other official documents; maintaining a file of the official acts of the governor and the legislature; administering the primary and election laws (as the state's chief election officer); issuing charters of incorporating businesses; assessing and collecting the franchise tax on corporations; administering the laws concerning the sale of securities; and appointing notaries public. The newest duty of the secretary is serving as the states international protocol officer. The office employs over 200 people.

A Woman's Place Is in the House, Senate, and the Governor's Mansion.



Did you know that Texas was only the second state to have a female governor and only a few states have had more female governors than Texas? Only two women—Miriam (Ma) Ferguson and Ann Richards—have held the position of Texas governor. Both made history in Texas politics as women governors. The first, a loyal wife to her political husband, served in an era when women's active involvement in politics and governments was unthinkable. The other was a divorced woman who won the office at a time when a woman's opportunities seemed boundless. Both were Democrats. The first woman governor in Texas set the precedent for the second, who rewrote state and national history decades later when her election allowed Texas to boast itself as the only state to have elected two women to the governor's office—a record that stood until 1997. Both opened political arenas for other women, including those currently serving Texas, that may not have been available but for their service. Both faced great challenges during their prepolitical lives. One remained faithful to her husband as he dealt with allegations of impropriety and corruption, impeachment, conviction, and removal from office. The other faced the personal challenges of divorce and alcoholism. In addition, both encountered incredible adversity during their campaigns and terms. One had to deal with the negative legacy of her husband's governorship, the influence of powerful and sometimes threatening interest groups, and the political savvy of renowned "old guard" politicians. The other had to run against perhaps the single most bloodthirsty field of primary and general election opponents in Texas politics and deal with the innumerable issues and problems left by her predecessor. In both instances, the women won election as governor in part due to the political and personal gaffes committed by men who never envisioned the women's victories. Yet, both women persevered and are now counted among only thirty women who have been elected to the governor's office nationwide.

In 1994, Richards lost the governor's race to George W. Bush, taking forty-six percent of the vote to Bush's fifty-three percent, despite spending twenty-three percent more than the Bush campaign. Before leaving office, she said, "I did not want my tombstone to read, 'She kept a really clean house! I think I'd like them to remember me by saying/She opened government to everyone."

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2. Texas Const., art. III, § 1.

3. Cite Eva Hershaw, "Agriculture Commissioner Grants Amnesty to Cupcakes in First Official Act," *Texas Tribune*, Jan. 12, 2015,

https://www.texastribune.org/2015/01...esty-cupcakes/.

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8.2: Choose Me! What Does It Take To Be Governor?

The formal qualifications for governor are so broad that several million Texans could legally run for the office. Article 4 of the Texas Constitution stipulates that the governor must be at least thirty years old, a citizen of the United States, and a resident of Texas for the five years immediately preceding the election. These requirements also apply to the lieutenant governor. Article 4 also mandates that the governor "shall be installed on the first Tuesday after the organization of the Legislature, or as soon thereafter as practicable."[4]

Formally qualifying for the Texas governorship and actually having a chance at being considered seriously as a candidate are two very different matters. The social, political, and economic realities of the state dictate that personal characteristics also play a critical role in determining who will be the victors in gubernatorial elections. Some of these personal characteristics are based on accomplishments, or at least positive involvement, for those who want to be governor. Others are innate traits that are beyond the control of the individual.

These characteristics are similar to but even more stringent than those for members of the legislature. In short, unless something unusual occurs in the campaign, tradition dictates that the successful candidate for governor will be a middle-aged white male who is politically conservative, well educated, involved in civic affairs, and either wealthy or well financed by those who are wealthy. In addition, the individual will probably have held some other office (often that of attorney general or lieutenant governor), although being a professional politician is sometimes a liability among voters.

Election, Term of Office, and Tenure

In Texas, the governor is chosen in a statewide election held during "off years" (even-numbered years when there is no presidential election). The candidates are selected in party primaries held earlier the same year. Gubernatorial elections are held in the off year so that national issues won't overshadow state issues. However, because elections for Texas governor often focus on personalities rather than issues, the importance of the off year is lost, and its main effect is that fewer people vote because there is no presidential election that serves as a drawing card. The lieutenant governor is selected in the same manner but runs independently of the governor.

In 1974, when a 1972 constitutional amendment became effective, the governor's term of office was extended from two to four years. There is no constitutional limit on the number of terms a Texas governor may serve.

You’re Fired! Well, At Least Impeached

In Texas, a governor may be removed from office only through an impeachment proceeding. **Impeachment** is a formal accusation similar to a grand jury indictment. The state constitution does not specifically define the meaning of “impeachable offenses.” By implication and by the precedents set in the impeachment of Governor James E. Ferguson in 1917, however, the grounds are malfeasance (official misconduct), misfeasance (incompetence), and nonfeasance (failure to perform) in office.

The impeachment procedure in Texas is similar to that at the national level. The Texas House, by a majority vote of those present, must first impeach the executive. Once the formal accusation is issued. the Senate acts as a trial court. Conviction requires a two-thirds vote of the senators present. Penalties for conviction are removal from office and disqualification from holding future governmental offices in the state. Criminal charges, if any, must be brought in a regular court of law.

Succession

So, if a governor is removed from office, then what? Who takes the governor’s place? If a governor is removed from office by impeachment and conviction, dies in office or before taking office, or resigns, the Texas Constitution provides that the lieutenant governor shall become governor. A 1999 constitutional amendment further stipulates that should the governor become disabled, the lieutenant governor must assume the duties of the office. Should the governor die or otherwise he unable to return, the lieutenant governor then becomes governor for the remainder of the term of the governor who vacated the office. If the lieutenant governor is unable to serve, the president pro tempore of the Senate becomes governor. When the lieutenant governor becomes governor, the lieutenant governor's position becomes vacant. The vacancy must he filled within thirty days by electing a member

of the state Senate to serve as presiding officer and to fulfill the duties of lieutenant governor until the next general election.

The impetus for the 1999 amendment was to ensure a smooth transition in the event that Governor George W. Bush was elected president before his term expired in January 2002. Bush's run at the presidency also intensified Senate elections set to occur in 2000 because control of the Senate meant control not only of redistricting but also of the all-powerful presiding officer's election. The amendment clarified some issues previously addressed by statue whether one person could be governor and lieutenant governor simultaneously (not possible)

Show Me the Money!

So, how much money does the governor make? A 1954 amendment allows the legislature to determine the salary of the governor and other elected executives. The legislature provided generous increments for many years, raising the governor's salary from $12,000 in 1954 to $99,122 in 1992–1993, and then to its current rate of $153,750 in 2019. Once second only to that of New York's governor, the Texas governor's salary has slipped to eleventh and continues to lag in the national rankings as other states have awarded pay raises to their governors.

The lieutenant governor is paid as a legislator ($7,200 annually plus a *per diem*) but receives a salary supplement for acting as governor whenever the governor leaves the state. Although well paid, particularly in comparison to legislators who are paid $7,200 annually (and a $221 *per diem*), the Texas governor is by no means the best-paid executive on the state payroll. Top-dollar honors belong to the chancellors, presidents, and athletic coaches of the state's largest university systems, many of whom receive base salaries of several hundred thousand dollars and total compensation packages that have the potential to reach as much as $2.5 million.

States pay their governors salaries only a fraction of what many top-level executives in the private sector earn. Despite the comparatively modest salaries, however, the states have no shortage of qualified applicants for their chief executive positions. Candidates continue to run and, when elected, to serve with reasonable competence. Consequently, state taxpayers have little incentive to increase gubernatorial pay.

The governor also receives numerous fringe benefits. The Texas Constitution provides an official mansion (**Figure 8.10**), and other benefits include travel and operating budgets, the use of state-owned vehicles and aircraft, bodyguards furnished by the Texas Department of Public Safety, and offices and professional staff. These benefits compare favorably with those of other governors.



Figure 8.10 Texas Governor's Mansion. The Texas Governor's Mansion, immediately southwest of the Texas Capitol building, has been home to Texas governors and their families since 1856. SOURCE: "Texas Governor's Mansion" by joseph a is licensed under CC BY-NC-SA 2.0

Staff and Organization

Like other chief executives, the governor alone is unable to perform all the functional and ceremonial tasks assigned to the office.

Personal staff and the professional staffs of the divisions that comprise the Office of the Governor provide assistance in fulfilling these obligations. Certain staff members are assigned to act as legislative liaisons that lobby for the governor's programs, and often it is through them that the governor makes known an impending threat to veto a particular piece of legislation. Other staff members are involved in recommending candidates for the numerous appointments the governor must make to executive agencies, panels, boards, and commissions. The governor's aides also prepare the executive budget, coordinate the various departments and activities of the governor's office, and schedule appointments and activities. Overall, in addition to handling routine duties and occasional emergency situations, the governor's staff provides assistance in performing the specific tasks assigned to the office by law and in orchestrating political activities to promote the enactment of the governor's programs.

Each governor organizes the office somewhat differently. More than anything else, the method by which programs are configured in organizational differences. Commonly, new program initiative', begin under the governor's auspices and then become independent or are moved under the authority of other agencies. As of 2021, the governor's office consisted of the following elements:

- Appointments Office, which assists late governor in making nominations for boards, commissions, and advisory committees;
- Budget, Planning, and Policy Division, which prepares the executive budget, including coordination of requests from state agencies and cooperation with the Legislative Budget Board to prepare a state strategic plan and monitor the development and implementation of the plans of individual agencies;
- Child Sex Trafficking Team, which works to prevent victimization and to recognize, recover, heal, and bring justice to survivors;
- Commission for Women, which promotes opportunities for Texas women through outreach, education, research and referral services;
- Committee on People with Disabilities, which pursues a vision where people with disabilities have full and equal access for independent, productive and self-determined lives;
- Committee on People with Disabilities, which serves a general advocacy function on behalf of people with disabilities;
- The Division of Economic Development and Tourism, which promotes Texas with expanding companies and visitors from across the country and all over the worlds;
- Human Resources Division, which provides information about employment in the governor's office;
- Public Safety Office, which enhances public safety through strategic direction and investments in programs that enhance the criminal justice system, support victims of crime and prevent terrorism;
- Texas Film Commission, which encourages moviemaking in the state by providing support for such activities as finding locations and accommodating production needs;
- Texas Military Preparedness Commission, which works to prevent base closures and assists defense-dependent communities;
- Texas Music Office, which is an information clearinghouse and promotion agency for the music industry;
- Press Office, which issues all press releases and announcements on behalf of the governor and works with the media;
- State Grants Team, which alerts agencies and local governments about funding opportunities;
- Governor's Commission for Women, which seeks to improve and acts as an advocate for the personal and professional status of women;
- Texas Workforce Investment Council, which plans and evaluates activities in conjunction with the development of a well-educated, skilled workforce;
- Texas Review and Comments System, which is the intergovernmental review system.[5]

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4. Texas Const., art IV.

5. “Gov. Abbott Announces ‘Operation Lone Star’ to Combat Drug, People Smuggling at the Border,” KFOX 14, Mar. 26, 2021, https://kfoxtv.com/news/local/govern...isis-at-border.

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8.3: So, What Does the Governor Actually Do?

The Texas governor has many formal powers including executive, judicial, legislative, as well as the many informal powers which are embodied in the various roles that make up the office of chief executive for the state, including chief of state, chief intergovernmental diplomat, and chief administrator. The personality of the governor and the political, social, and economic circumstances that prevail during a governor's administration largely determine which roles are emphasized (**Figure 8.11**).



Figure 8.11 Left to right: Governor Ann Richards (1990-1994); Governor George Bush (1994-2000); Governor Rick Perry (2000-2014); Governor Greg Abbott (elected 2014, currently serving). SOURCE: https://en.Wikipedia.org/wiki/Ann_Richards;.George W. Bush, "43 George W Bush" by US Department of State is marked with CC PDM 1.0; Rick Perry.

Executive Powers

News stories frequently describe the governor as the "chief executive," a role that refers to gubernatorial control over the stare bureaucracy and the governor's powers of appointment and removal, as well as budgeting, planning, supervisory, and clemency powers. Although the governor's role as the chief executive is one of the most time-consuming roles, it traditionally has been one of the weakest.

Appointment Powers The governor's **appointment powers** are a crucial part of his executive powers. Texas has a long ballot because a large number of state officials, including many in the executive branch, are elected by the people rather than appointed by the governor. The list of officials elected on a statewide basis includes the lieutenant governor, whose primary role is legislative: the attorney general; the comptroller of public accounts; the commissioner of the General Land Office; and the agriculture commissioner. In addition. members of the Texas Railroad Commission and the State Board of Education, two powerful bodies, are elected. Because they are elected independently, they owe no allegiance or any obligation to the governor. Lacking direct influence on these elected officeholders, the governor must be highly skilled in the art of persuasion.

One of the most significant executive powers of the Texas governor is appointment power. Appointments allow the Governor to place allies in strategic locations in state government this is a critical asset in his or her efforts to establish and carry out policies. Governors can also use the appointment power to reward political supporters, a practice known as **patronage.**

The governor's appointment power is limited by the requirement that two-thirds of the Senate confirm appointments. The most visible executive appointments that the governor makes are those of secretary of state, commissioner of education, commissioner of insurance, commissioner of health and human services, and the executive director of the Economic Development and Tourism Division. In addition, the governor appoints the director of the Office of State-Federal Relations and the adjutant general (who heads the state militia). The governor makes several other appointments that are less prominent but nonetheless are of interest to those who fall within the jurisdiction or service areas of these bodies. These appointments are also useful channels of political patronage. Some examples are the Office of State-Federal Relations, the Office of Housing and Community Affairs, the Texas Film Commission, and the Texas Music Office. Unlike most other agencies in the executive branch, the Governor exercises direct authority over these offices. When a vacancy occurs in one of the major elected executive positions, the governor appoints someone to serve in the office until the next election. The governor also appoints all or some of the members of about two dozen

advisory councils and committees that coordinate the work of two or more state agencies.

Most state agencies are not headed by a single executive who makes policy decisions. The result is a highly fragmented executive branch in which power is divided among both elected executives and appointed boards. Nevertheless, the governor has a major effect on state policy through approximately 1500–3000 appointments to more than 100 policymaking, multimember boards and commissions. Examples include the University of Texas System board of regents of higher education institutions, the Public Utility Commission, and the Texas Youth Commission. Because Rick Perry was governor for fourteen years, he was able to make over 8000 appointments! Fun fact: twenty-five percent of these were campaign donors.

The governor also uses the appointment power to fill vacancies in the judiciary. Although Texas has an elected judiciary, every legislature creates some new courts, and vacancies occur in other courts. The governor is authorized to make appointments at the district court level and all other upper-level courts. Appointees to these benches serve until the next election. Indeed, many of these judges in the state are first appointed and subsequently stand for election.

The governor must obtain a two-thirds confirmation vote from the Texas Senate for appointments. In addition, **senatorial courtesy** (the Senate's tradition of honoring the objection of a senator from the same district as the nominee) applies. Texas's short biennial legislative session, however, permits the governor to make many interim appointments when the legislature is not in session. This practice allows some appointees to serve for as long as nineteen months without Senate confirmation. Appointments made while the legislature is in recess must be presented to the Senate within the first ten days of the next session, whether regular or special.

Another aid to the governor is **incumbency**. A governor who is reelected is able to appoint all members of numerous boards or commissions who serve staggered six-year terms by the middle of the second term and perhaps earlier if some members resign. The governor may then have considerable influence over policy development within the agency, even though there may be little time left in the governor's term.

Single Executive Appointments Four important agencies headed by a single appointed executive are the office of secretary of state, the Health and Human Services Commission, the Office of Suite-Federal Relations, and the adjutant general. In addition, there are at least thirteen other state agencies headed by individuals appointed by the governor. These agencies, led by executive directors, arc less well known and serve less important functions. Among these agencies are the Department of Commerce, the State Office of Administrative Hearings, the Insurance Commission, the Department of Housing and Community Affairs, and the Public Utility Commission Council.

The beginnings of the Health and Human Services Commission date back to the Great Depression when the state legislature in 1939 established the new Department of Public Welfare. The department was composed of three members appointed by the governor for six-year terms; the governor also appointed an executive director to serve as chief administrative officer of the department. The major duties of the department were to administer the state laws regarding assistance to the needy, the aged. persons with disabilities, and dependent children and to carry out the state's child welfare program. The department was also charged with responsibility for protecting all children from abuse, neglect, or exploitation, licensing child-care and child-placing facilities, and providing adoptive services.

In 1977 the legislature changed the name of the department to the Texas Department of Human Resources. The department was restructured in 1980, with the programs categorized to reflect two major client groups: families and children, and aged and persons with disabilities. In 1985 the Department of Human Resources was renamed the Texas Department of Human Services.

The legislature authorized a new Health and Human Services Commission in 1992 to oversee the state's eleven human services agencies. Besides the Texas Department of Human Services, these agencies include the Texas Department of Health, the Department of Mental Health and Mental Retardation, the Texas Rehabilitation Commission, the Texas Commission for the Blind, the Texas Commission for the Deaf and Hearing Impaired, the Texas Youth Commission, the Texas Juvenile Probation Commission, the Texas Commission on Alcohol and Drug Abuse, the Texas Department on Aging. and the Interagency Council on Early Childhood Intervention Services. The Child Protective Services, Adult Protective Services, and Childcare Licensing programs were subsequently transferred to the new Texas Department of Protective and Regulatory Services.

The Texas Office of State-Federal Relations (OSFR) was established in 1965 as a division of the governor’s office and became a separate agency in 1971. The governor appoints the executive director of the agency, subject to approval by the Senate. The governor, lieutenant governor, and speaker of the House serve as OSFR's Advisory Policy Board and set the agency's legislative agenda at the federal level.

Texas officials understand that in order for the state government to maintain a strong position in its relationship with the federal

government, Texas must maintain an active presence in Washington, DC. Therefore. OSFR's mission is to promote communication and build relationship; between the state and federal governments and to advance the interests of the people of the state of Texas.

The major goal of the OSFR is to increase the influence of the governor and the state legislature over federal action that has a direct or indirect economic, fiscal, or regulatory impact on the state and its citizens, maintaining an active role for Texas in the national decision-making process. OSFR achieves these aims by working with the governor's office, the legislature, and state agencies to coordinate a federal agenda for the state of Texas; working with the U.S. Congress, the administration, and federal agencies to pass and implement legislation and rules favorable to Texas; and providing information to Texas officials about federal initiatives and helping them influence those initiatives.

The predecessor to the Adjutant General's Department existed under the Republic of Texas, but it was abolished in 1840, then reestablished as a state office in 1846. When it was reestablished, its activities were limited to the verification of veterans' land claims. The office operated intermittently from 1846 until 1905, when it was established by the Texas legislature. The adjutant general, who heads the Adjutant General's Department, is appointed by the governor for a two-year term. Two assistant adjutants general are also appointed by the governor upon recommendation of the adjutant general. All three officials must have previous military

service and at least ten years' experience as commissioned officers in an active unit of the Texas National Guard.

The adjutant general serves as the governor's aide in supervising the military department of the state. Responsibilities of the Adjutant General's Department, which is located at Camp Mabry in Austin, include providing military aid to state civil authorities and furnishing trained military personnel from the state's military forces—the Texas State Guard, the Texas Array National Guard, and the Texas Air National Guard—in case of national emergency, civil unrest, or war. The office's annual working budget exceeds $14 million.

Multimember Board and Commission Appointments In addition to elected and appointed officials, the governor appoints over 2,800 individuals who serve on over 300 policy-making and governing boards, commissions, and other agencies that conduct day-to-day operations of the state. Multimember boards or commissions head most state administrative agencies and make overall policy for them. These boards appoint chief administrators or heads to handle the responsibilities of the agencies, including the budget, personnel, and the administration of state laws and those federal laws that are carried out through state governments. The boards and commissions have historically demonstrated a great amount of independence and autonomy. Two of the Texas state boards and commissions—the Texas Railroad Commission and the State Board of Education—have elected members.

Established by the state legislature in 1891, the **Texas Railroad Commission** (TRC) (**Figure 8.12**) has been historically one of the most important regulatory bodies in the nation because it strongly influenced the supply and price of oil and natural gas throughout the United States for much of the twentieth century. The commission was originally established to oversee railroads, including jurisdiction over rates and operations of railroads, terminals, wharves, and express companies. After 1894, when the legislature made the agency elective, the three commissioners have served staggered six-year terms. The Railroad Commission also includes over 1,000 employees.



Figure 8.12 Pictured above Chairman Christi Craddick, Wayne Christian, and Jim Wright.

Despite the fact that the federal Interstate Commerce Commission preempted the regulation of interstate transportation, the TRC was successful in restraining intra-state freight rates. While continuing to regulate intrastate railroads, the commission added buses and trucks to its transportation responsibilities. Its importance to the state and nation, however, has rested on its authority over the energy industry. In 1917, the legislature granted the TRC the authority to see that petroleum pipelines remained "common carriers" (meaning that they did not transport an individual or entity's oil or gas to the exclusion of others). Over the next twenty-five years, the TRC gained responsibility for enacting well-spacing rules, accepted jurisdiction over gas utilities, oversaw an enormous expansion of commission activity during the 1920s, and won the authority to prorate, that is, to set the rate at which every oil well in Texas might produce. This latter power enabled the TRC to simultaneously support oil prices and conserve the state's resources.

While its influence over oil has declined somewhat, the commission's responsibility for natural gas has greatly expanded. Because gas has traditionally been considered to be of lower value than oil, however, commission policies in this area were less developed and of less interest within the industry and to outsiders, but only until the 1930s and 1940s, when measures were taken to preserve the state's natural gas by forcing producers to return gas to reservoirs (instead of "flaring," or wasting it) and sustain reservoirs' pressure. Gas acquired considerable importance again in the 1970s. Although the commission's involvement in oil policy has drastically declined, it remains an important actor on the national energy stage. The commission also regulates all mining of coal and uranium and intrastate trucking, responsibilities that give the commission tremendous political clout in the state.

The **State Board of Education** (**Figure 8.13**) is responsible for setting the goals, adopting the policies, and establishing the standards for educational programs in the Texas public school system. The State Board of Education was originally created as an elected body but was made an appointive hoard as part of the public-school reforms of 1984. In 1987, voters overwhelmingly approved returning it to elective status. A majority of the board's current members are conservative Republicans, a fact that has reintroduced a longstanding political controversy about the board's selection of textbooks and curriculum (especially for biology and health classes) for public schools.

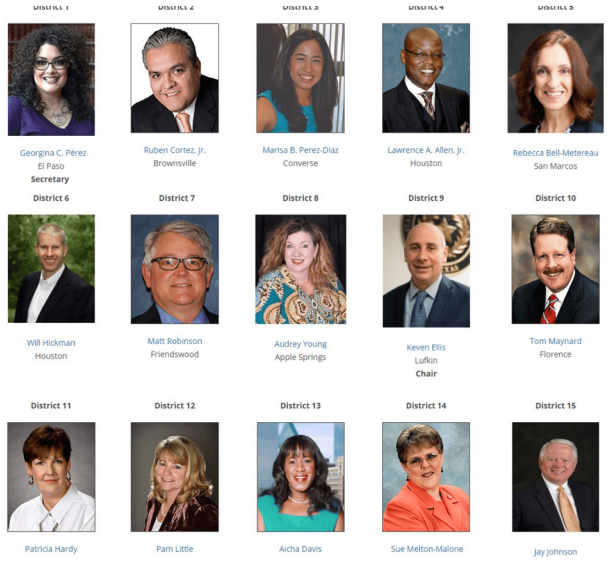


Figure 8.13 The board is composed of fifteen members elected from State Board of Education districts that are roughly equal in population. SOURCE: https://tea.texas.gov/about-tea/lead...tate-board-of- education/sboe-board-members/sboe-members.

The commissioner of education serves as chief executive officer of the board. The commissioner is also the leader of the Texas Education Agency (TEA) and in that role supervises the administration of hoard rules. Together the hoard, the commissioner. and the TEA facilitate the operation of Texas's vast public school system consisting of over 1,200 school districts and charter schools. HIM e than 7,900 campuses, more than 590,000 educators and other employees, rind more than 4.5 schoolchildren.

The board designates and mandates instruction in the knowledge and skids that are essential to a well-balanced curriculum and approves and determines passing Scores for the state-mandated assessment program. It also oversees the investment of the Permanent School Fund, approves the creation of charter schools, and adopts regulations and standards for the operation of adult education programs provided by public school districts, junior colleges, and universities.

Although policy decisions must be made by the full board, much of the preliminary work is done in committee sessions during which members of three standing committees—Instruction, School Finance/Permanent School Fund, and School Initiatives—consider items listed in the board agenda for the scheduled business meeting and review staff progress reports of work under way, proposals for new pro-grams, and suggestions for improving current efforts. The Committee on Instruction addresses issues concerning curriculum and instruction, student testing, vocational and special education programs, and alternatives to social promotion. Primary responsibility for issues dealing with school finance, vocational and special education programs, and the Permanent School Fund rests with the Committee on School finance/Permanent School Fund. The Committee on School Initiatives deals with issues such as charter schools, the long- range plan for public education, and rules proposed by the State Board of Educator Certification. In November 2020, the Texas State Board of Education made its first changes to its sexual education in twenty-three years but its new changes still fail to address identity and orientation by neglecting the LGBTQIA community.

Removal Powers Texas governors have limited removal power. They can remove political officials they have appointed, but only with the consent of the Senate. They can also remove personal staff members and a few executive directors, including the director of the Department of Housing and Community Affairs. However, governors cannot remove members of boards and commissions who were appointed by their predecessor or state executives who have been independently elected. This lack of removal power deprives the governor of significant control over the bureaucrats who make and administer executive policy and makes the governor's job of implementing policies through the state bureaucracy more difficult.

There are three general methods for removing state officeholders: impeachment, which involves a formal accusation—impeachment—by a House majority and requires a two-thirds vote for conviction by the Senate; address, a procedure whereby the legislature issues a request, after a two-thirds vote of both Houses, to the governor to remove a district or appellate judge from office; and quo warranto proceedings, legal procedures whereby an official may be removed by a court. Since Article 15 of the Texas Constitution stipulates the right to a trial before removal from office, impeachment is likely to remain the chief formal removal procedure because it involves a trial by the Senate.

Budgetary Powers Ok, so the Texas governor does not draft the budget, that is the job of the comptroller of public accounts.

But the governor does submit a budget message that outlines revenue needs to the legislature at the beginning of the regular legislative session. By law, the governor must submit a biennial budget message to the legislature within five days after that body convenes in regular session. Prepared by the governor's Division of Budget, Planning, and Policy, the budget indicates to the legislature the governor's priorities and signals items likely to be vetoed. With the exception of the item veto, the Texas governor lacks the strong formal budgetary powers possessed by many state executives. One additional financial power held by the governor is the ability to approve deficiency warrants of no more than $200,000 per biennium for agencies that encounter financial emergencies or exhaust their funding before the end of the fiscal year.

Traditionally, the Legislative Budget Board (LBB), which also prepares a budget for the legislature to consider, has dominated the budget process. The legislature always has been guided more by the legislative budget than by the one devised on behalf of the governor.

Planning Powers Both modem management and the requirements of many federal grants-in-aid emphasize regional planning, usually by county or municipal governments., and the governor directs planning efforts for the state through the Budget, Planning, and Policy Division. When combined with budgeting, the governor's plan-fling power allows a stronger gubernatorial hand in the development of the state's new programs and policy alternatives. Although still without adequate control over some state programs. the governor has had a greater voice in suggesting future programs over the past two decades. mainly because many federal statutes designated the governor as the position empowered to approve federal grants.

Supervisory Powers The state constitution charges the governor with the responsibility for seeing that the laws of the state are "faithfully executed" but provides few tools to assist in fulfilling this function. The governor's greatest supervisory and directive powers occur in the role of commander in chief. Governors can request reports from state agencies, appoint hoard chairs, remove their own appointees, and use political influence to force hiring reductions or other economies. But lack of appointment power over the professional staffs of state agencies and lack of removal power over a predecessor's appointees limit the governor's ability to ensure that the state bureaucracy performs its job.

The governor thus must resort to informal powers to exercise control over the administration. In this respect, the governor's staff is of supreme importance. Staff members who can establish good rapport with state agencies may extend the governor's influence to areas where the governor does riot have formal authority. The governor's leadership of the party and the veto power two important factors that help staff perform this task.

Military and Law Enforcement Powers Can Texas make treaties or go to war with another country? No, the state of Texas does not independently engage in warfare with other nations so it might seem like there is no need for a commander in chief. However, the governor has the power to declare **martial law**—that is, the power to suspend civil government temporarily and replace it with government by the state militia and/or law enforcement agencies, although this power is seldom used.

The governor is also commander in chief of the military forces of the state (Army and Air National Guard), except when they have been called into service by the national government. The head of these forces, the adjutant general, is one of the governor's important. appointees. The governor also has the power to assume command of the Texas Rangers and the Department of Public Safety to maintain law and order. These powers become important during natural disasters or civil unrest. In addition, following the terrorist attacks on the United States on September 11, 2001, the national government created the Department of Homeland Security and mandated security responsibilities for state and local governments in addition to their traditional function of disaster management. The Texas homeland security office, the Division of Emergency Management, reports to the governor, but is operationally attached to the Texas Department of Public Safety.

Governor Abbott has been utilizing the National Guard to vaccinate homebound seniors and address the problems at the border. Recently Greg Abbott sent 1,100 National Guard troops to vaccinate seniors who could not get to facilities to receive the COVID 19 vaccine. This initiative is part of a project called “Save our Seniors.”



The National Guard has also been mobilized to address the mounting concern over unauthorized migrants entering Texas at the southern border. On Saturday March 6, 2021 Gov. Abbott launched “Operation Lone Star.” According to a reporter at KFOX14, “The Operation integrates DPS with the Texas National Guard and deploys air, ground, marine, and tactical border security assets to high threat areas to deny Mexican Cartels and other smugglers the ability to move drugs and people into Texas.”[6] The longstanding complex problem of immigration is compounded by the overcrowding of the detention facilities. Oklahoma senator James Lankford tweeted that the detention centers which are designed to hold only eighty people are currently holding 709![7]

Judicial Powers

The governor’s power with regard to acts of **clemency** (acts regarded as merciful that typically involve leniency or moderation in the severity of punishment due) is restricted to one thirty-day reprieve—a stay of execution—for an individual sentenced to death. in cases of treason against the state (a rare crime), the governor may grant pardons, reprieves, and commutations of sentences with legislative consent. The governor also may excuse or reduce fines or bond forfeitures and restore driver's and hunting licenses. In addition, the governor has the discretionary right to revoke a parole or conditional pardon. Beyond these limited acts, the state's chief executive officer must make recommendations to the Board of Pardons and Paroles, which is part of the Department of Criminal Justice. Although empowered to refuse an act of clemency recommended by the board, the governor cannot act without its recommendation in such matters as granting full and conditional pardons, commutations, reprieves, and emergency reprieves.

As discussed earlier, the governor is able to use the appointment power to fill vacancies in the judiciary. In Texas judges are elected in partisan elections, but sometimes vacancies occur, and the governor then is able to appoint a judge until the next election, and with the power of incumbency behind them, well it increases the likelihood of reelection. The governor is authorized to make appointments at the district court level and all other upper-level courts.

Legislative Powers

Although the legislature tends to dominate Texas politics, the governor is a strong chief legislator who relies on three formal powers to fulfill this role: **message power**, **session power**, and **veto power**.

Message Power The governor may give a message—a formal means of expressing policy preferences—to the legislature at any time, but the constitution requires a gubernatorial message when legislative sessions open (known as the "State of the State" message) and when a governor retires. By statute, the governor must also deliver a biennial budget message. Other messages the governor may choose to send or deliver in person are often "emergency" messages when the legislature is in session. Messages also attract the attention of the media and set the agenda for state government. Coupled with able staff work, message power can he an effective and persuasive tool. In both 2003 and 2007. Governor Perry declared insurance rates and medical malpractice reform as emergency measures. an indication that he had not otherwise achieved his policy objectives. A governor also often

communicates his or her intentions at meetings and social gatherings or through the media.

Session Power As previously discussed, the legislature can be called into special session by the governor only after the legislature's regularly scheduled 140-day regular session has concluded. Special sessions are limited to no more than thirty days, but a governor may call an unlimited number of such sessions.

The governor sets the agenda for special sessions, although the legislature, once called, may consider other matters on a limited basis, such as impeachment or approval of executive appointments. As the complexity of state government has grown. legislators sometimes have been unable to complete their work during the short biennial regular sessions. When they fail to complete enough of the agenda. they know a special session is likely. However, any governor contemplating calling a special session must consider whether he or she has collected the votes necessary to accomplish the purpose of the session.

As a result of the COVID 19 virus, there were delays in census information gathering, which has delayed redistricting in Texas in 2021. On February 12, 2021 the U.S. Census Bureau has announced that the population numbers that are used to draw the district lines and reflect the population growth over the past ten years will be not be ready until September 30, 2021. This delay will cause Governor Abbot to call a special session to address redistricting in Fall of 2021.[8] ***Veto Power*** The governor's strongest legislative power is the veto. Every bill approved by both houses of the legislature in regular and special sessions is sent to the governor, who has the option of signing it, allowing it to become law without his signature. or vetoing it. If the legislature is in session, the governor has ten days—Sundays excluded—in which to act. If the bill is sent to the governor in the last ten days of a session or after the legislature has adjourned, the governor has twenty days—including Sundays—in which to act. If the governor does not sign the bill within those ten- or twenty-day periods, it automatically becomes law.

If the governor vetoes a bill while the legislature is still in session, the legislature may override the veto by a two-thirds vote of both Houses. However, because of Texas's short legislative sessions, many important bills are often sent to the governor so late that the legislature has adjourned before the governor has had to act on them. In such instances, the governor's veto power is absolute because the legislature cannot override if it is not in session, and consideration of the same bill cannot be carried over into the next session. Short biennial sessions thus make the governor's threat of a veto an extremely powerful political tool. In addition, because an override of a veto requires a two-thirds vote in both Houses, they occur only rarely.

The governor has one other check over appropriations bills: the **line-item veto.** This device permits the governor to delete individual items from a bill without vetoing it in its entirety. The item veto may be used to strike a particular line of funding, but it cannot be used to reduce or increase an appropriation.

Informal Powers

In routine situations, the governor is almost wholly dependent on local law enforcement and prosecuting agencies to ensure that the laws of the state are executed. When evidence of wrongdoing exists, the governor often invokes the informal powers of the office, appealing to the media to focus public attention on errant agencies and officeholders. In the chapter opening, Governor Abbott uses social media (Twitter) to deride President Biden on his handling of the mass amounts of unaccompanied minors arriving from Mexico. He further has been using conservative media outlets like Fox News to draw more attention to this issue and the health concerns arising from it. In addition to the use of media, the governor plays a number of ceremonial roles invested with informal powers, including chief of state, intergovernmental diplomat, and chief administrator of the Texas bureaucracy.

Chief of State Pomp and circumstance are a part of being the top elected official of the state. Just as presidents use their ceremonial role to augment other roles, so do governors. Whether cutting a ribbon to open a new highway, leading a parade, or serving as host to a visiting dignitary, the governor's performance as chief of state yields visibility and the appearance of leadership, which enhance the more important executive arid legislative roles of the office. In the modem era, the governor is often the chief television personality of the state and sets the policy agenda through publicity.

Texas governors are more often using the ceremonial role of chief of state, sometimes coupled with the role of chief intergovernmental diplomat, to become actively involved in economic negotiations such as plant locations. Efforts are directed toward both foreign and domestic investments and finding new markets for Texas goods. In such negotiations, the governor uses the power and prestige of the office to become the state's salesperson. Texas has a cost of living below the national average, fewer restrictions, and no state income taxes so is it any wonder that many tech companies are moving to Texas. These include Tesla, Oracle, Hewlett Packard, Google, and many others.

Savvy governors use the chief of state role to maximize publicity for themselves and their programs, Because Texas is the second most populous state in the country, the actions of the Texas governor often make national as well as state headlines.

Chief Intergovernmental Diplomat The Texas Constitution provides that the governor, or someone designated by the governor, is the state's representative in dealings with other states and with the national government. This role of intergovernmental representative has increased in importance for three reasons. First, federal statutes now designate the governor as the official with planning and grant-approval authority for the state. This designation has given the governor's budgeting, planning, and supervising powers much greater weight in recent years.

Second, some state problems, such as water and energy development, often require the cooperation of several states. For example, Governor Clements and live other governors attempted to devise solutions for the water problems experienced in the High Plains area. Additionally, although the U.S. Constitution precludes a governor from conducting diplomatic relations with other nations, Texas's location as a border state gives rise to occasional social and economic exchanges with the governors of Mexican border states on matters such as immigration, energy, and the environment.

Third, acquiring federal funds is critical because national funding relieves the pressure on state and local government revenue sources. The Texas governor works with other governors to secure favorable national legislation, including both funding and limits on underfunded or unfunded federal mandates. Thus, Texas governors are active members of the National Governors Association and participants in the National Governor's Conference. They must also be active in regional and political party groups.

A more traditional use of the governor's intergovernmental role is extradition, which is mandated by Article 4 of the U.S. Constitution. Article 4 provides for the rendition (surrender) of fugitives from justice who commit crimes in Texas and then flee across state lines to another state. The Texas governor signs the rendition papers and transmits them through the secretary of state to the appropriate law enforcement officials. Law officers are then responsible for capturing and securing the fugitives and returning them to the state.

Chief Administrator The Texas governor oversees the state's bureaucracy that executes and administers government policy. The governor usually appoints the agency head or members of the board or commission that oversees the agency and, for many agencies, also appoints the board chair. This power of appointment can greatly affect an agency's success or failure. A governor who is a skillful chief legislator can influence neutral legislators to look favorably on an agency and thus may help an agency get its budget increased or add a new program. As chief administrator, the governor can referee when an agency does not have the support of its clientele group and give an agency visibility when it might otherwise languish in obscurity.

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8.4: The Texas Bureaucracy

As the national government expanded its programs and their associated costs throughout the 1970s, state and local governments grew rapidly to take advantage of available federal dollars for new programs, respond to mandatory federal initiatives, promote economic expansion, and develop new programs and services. Each new service increased the number of people necessary to keep the government functioning. In Texas. the combination of more programs and increased population resulted in an increase in the size and scope of state and local governments Texas has fewer employees per 10,000 people than the other states except in the category of corrections. In all the other major program areas—higher education, highways, hospitals and public welfare— Texas has fewer employees, those lower numbers do not signal greater efficiency. Rather they signal that Texans receive proportionately fewer government services than citizens to the other large states.

As the economy all across the country faltered during the 1990s, Texas's largely Anglo middle class became more concerned about the economy and its role in it than about social issues. Economic and political distance between the mainly white suburbanites and the basically minority lower economic class in the central cities increased. Because the lower class tends not to vote, governments at all levels tended to listen to the suburbanites, a phenomenon that resulted in more attention to accountability. greater demands for tax ceilings and spending cutbacks, and increased emphasis on economic development and less on the welfare state. However, major problems that only government could address remained—crime, environmental pollution, and the educational system, for example. Moreover, the national government began to impose requirements such as clean air and water upon the states in the form of mandates. The states in turn passed problems and mandates such as the need for better education to the local governments.

Consequently, state and local governments again increased in size, programs, and expenditures, much to the regret of many taxpayers, who preferred less government and an end to state and local tax increases.

The State of Texas is the state's largest single employer. Over seventy-five percent of Texas state employees work in five major areas: criminal justice, mental health and retardation, human services, transportation, and public safety. The structure and practices of the Texas bureaucracy reflect the general belief that state government should be decentralized. Unlike the employment systems of most states, Texas has no merit-based civil service system or personnel agency that assumes the responsibility of overseeing all human resources matters. Each agency, board, panel, or commission establishes its own rules and regulations regarding personnel.

The state prison system, which accounts for about one in five employees added to state payrolls since the late 1980s, is the fastest-growing employment sector in state government. Large and generally consistent employment growth in state government also occurred in the major health and human services agencies. The number of hospital workers, public welfare employees, and those who work with state and federal public assistance programs for the poor (such as Temporary Assistance to Needy Families, food stamps and Medicaid, immunization services, health inspections, and environmental pollution control) increased. Employment growth in higher education has also been consistent, but to a lesser extent. The remaining state agencies have grown at an average annual rate of less than four percent.

Because the administrators operate in the arena of political activities, they must rely on a number of individuals and groups who use political and other tactics to sustain themselves. Among these individuals and groups are the client groups with whom they share goals, personnel, information, and lobbying strategies; the legislature. upon whom agencies exert both direct and indirect influence; the governor, who is interested in protecting the interests, authority, and financial resources of the bureaucracy; the public, which provides some agencies with substantial public recognition and support: and agency leaders.

Accountability and Sunshine Laws

Freedom of information legislation, also described as open records laws, includes laws that set forth the rules on access to information or records held by government bodies. In general, such laws define the legal process by which government information must be made available to the public. Under the Texas Open Records Act. originally passed in 1973, the public, including the media, has access to a wide variety of official records and to most public meetings of state and local agencies. Sometimes called the **Sunshine Law** because it forces agencies to shed light on their deliberations and procedures, this act is seen as a method of preventing or exposing bureaucratic ineptitude, corruption, and unnecessary secrecy. An agency that denies access to information that is listed as an open record in the statute may have to defend its actions to the attorney general and before a court. In addition, the legislature also requires state agencies to write their rules and regulations in understandable

language.

Closely related is open meetings legislation, which allows access to government meetings in addition to the records relating to those meetings. The 1987 Texas Open Meetings Act strengthened public access to information by requiring government bodies to certify that discussions held in executive sessions were legal or to tape-record closed meetings. The law generally provides that every regular, special, or called meeting of a governmental body, including city councils and most boards and commissions, must be open to the public and

comply with all the requirements of the act. There are seven exceptions that generally authorize closed meetings, also known as executive sessions. Closed meetings are permitted when sensitive issues such as real estate transactions or personnel actions are under consideration, but the agency must post an agenda in advance and submit it to the secretary of state, including what items will be discussed in closed session.

In 1999, the legislature strengthened open meetings provisions by placing firm restrictions on staff briefings that could be made before governing bodies at the state and local level. Two new types of exceptions emerged from the Seventy-sixth Legislature (economic development and utilities deregulation), but these were seen as protections on behalf of the public when a government was in a competitive situation. Thus, while Texas government became even more open following the 1999 session, governments were still permitted to hold closed meetings when competitive issues were the topic of discussion. In 2005, the Seventy- Ninth Legislature mandated that all public officials and members of all boards receive training in open government. Unfortunately, Sunshine week which lasts from March 14-20, was not as shiny as usual because the 2020-2021 COVID pandemic and the 2021 February freeze has served as an excuse for not releasing information to the public. The executive director of the Freedom of Information Foundation of Texas, Kelley Shannon questions, “Where are COVID-19 clusters occurring?”[9] She asked in a recent blog post:

> Are elderly loved ones safe? What’s the latest on COVID testing and vaccine distribution? How are taxpayer dollars being spent on pandemic aid in our communities? The Texas Public Information Act is supposed to help us answer these questions of life and death and following the money. But in many cases, governments are using the pandemic itself to ignore them.[10]

Sunset Legislation

With the passage of the Sunset Law by the Sixty-Fifth Legislature in 1977, Texas established a procedure for legislative oversight by allowing the legislature to evaluate more than 150 state agencies, boards, commissions, and departments on a periodic basis (usually every twelve years). These **sunset reviews** are conducted by a twelve-member Sunset Advisory Commission composed of five senators and five representatives appointed by their respective presiding officers, who also appoint two citizen members each. The chairmanship rotates between the House and the Senate every two years. The Texas Sunset Advisory Commission (TSAC) determines the list of agencies to be reviewed before the beginning of each regular legislative session. The TSAC's 2008-2009 agenda includes a mixed bag of forty general government, health and human services, public safety and criminal justice, business and economic development, and regulatory licensing agencies and programs. The following is a flow chart (**Figure 8.14**) which illustrates how sunset works.

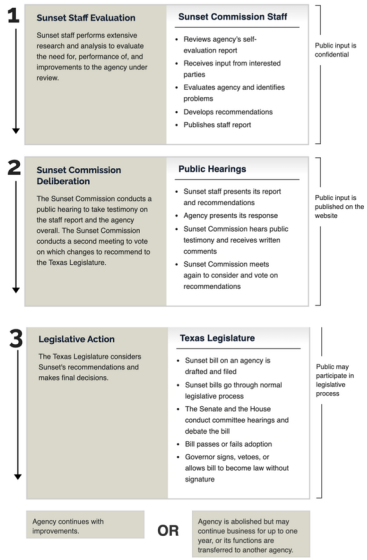


Figure 8.14 How Sunset Works. SOURCE: The Texas Sunset Advisory Commission.

The agencies must submit self-evaluation reports that recommend improvements in efficiency and effectiveness, and the TSAC coordinates its information gathering with other agencies that monitor state agencies on a regular basis, such as the Legislative Budget Board, legislative committees, and the offices of the state auditor, governor, and comptroller. The TSAC also conducts public hearings, during which it questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. Following the hearing, the legislature may recommend that an agency continue, reorganize, or merge with another agency.

If the Sunset Commission takes no action, the "sun sets" on the agency and it ceases to exist. In some cases, an agency's responsibilities or jurisdiction is transferred to another agency that has demonstrated good performance. Since the first sunset reviews, over fifty agencies have been abolished, and at least ten other agencies have been consolidated.

Suggested Reforms

A number of legislators and other elected officials have suggested that Texas should attempt to reduce state government employment levels and curb future growth, Researchers of state government growth trends have recommended that the Texas legislature should cap employment in executive branch agencies and institutions of higher education and reduce the number of managers and supervisors through attrition. The reduction in higher-paid personnel would result in a reduction of the agency's expenditures and future budgets. Others urge that that employment levels at the state's bureaucratic agencies should be allowed to grow at a rate no faster than that of the agency's client population. When the legislature authorizes a new program or reassigns programs to other agencies, the additional employees needed to administer those programs

would be added to the administering agency's cap. Reformers also recommend that all state agencies and institutions of higher education should implement a legislature-created uniform state payroll system in order to create consistent in salaries throughout the entire state bureaucracy.

Forecasters contend that implementing these and other minor changes to the existing system would maximize employee and agency productivity, increase the efficiency of the state bureaucracy. and result in an annual financial savings. Some critics charge, however, that enacting and applying these changes is unrealistic because the affected agencies will expend great effort to protect their power and interests. Bureaucratic agencies and their employees are motivated initially to substantiate their existence. Their subsequent desire to grow derives from their wish to maintain their positions, their genuine commitment to the programs administered by their organizations, and also perhaps their sincere concern for the people who benefit from their agency's programs.

Perhaps the most important suggestion for reform of the state bureaucracy is to create a cabinet-type government. Such a reorganization could consolidate more than 230 agencies into a series of executive departments that report to the governor. The only elected executives would be the governor and the lieutenant governor. This scheme, similar to the organization of the national government, would still leave the largest regulatory commissions—the Texas Railroad Commission to the Public Utilities

Commission, and others—as independent agencies.

Reorganizing the bureaucracy would pose a great challenge because a major package of constitutional amendments and statutes would he required. The likelihood of such a sweeping change is small. especially in light of the many individuals and entities intent on preserving the status quo.

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9. Kelley Shannon, “Opinion: In Pandemic Era, Texans’ Access to Public Information at Risk,” *Austin American-Statesman*, Feb. 8, 2021, https://www.statesman.com/story/opin...sk/4435895001/.

10. Kelley Shannon, “In Pandemic Era, Texans’ Access to Public Information at Risk,” Freedom of Information Foundation of Texas: Protecting the Public’s Right to Know, Feb. 5, 2021, https://foift.org/2021/02/05/in-pand...ation-at-risk/.

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8.5: Conclusion

The fragmented executive branch of Texas government means that Texas has a plural executive and the governor must share executive power with a number of other elected officials and appointees who are relatively independent and autonomous. Elected executive branch officials, in addition to the governor, are the lieutenant governor, the attorney general, the comptroller of public accounts, the commissioner of the General Land Office, and the commissioner of agriculture.

Although the office of Texas governor is constitutionally weak, the governor performs a number of important functions for the state: chief executive, commander in chief, chief legislator, chief of state, chief intergovernmental diplomat, and chief administrator. In addition, the governor's office has effective control over regional planning and federal grant applications, a line-item veto over appropriations and a general veto over legislation, command over the militia and law enforcement agencies, a variety of leadership opportunities, and some control over the presiding officers of appointed boards and commissions.

Two measures are used to harness the Texas state bureaucracy: Sunshine Laws (freedom of information) and sunset legislation. Traditional controls such as the legislative audit and the legislature's power to investigate agency activities also help promote bureaucratic accountability. Suggested reforms for improving the state bureaucracy include reducing state employment levels and curbing future growth, implementing a uniform state payroll system, and creating a cabinet- style executive branch government by consolidating hundreds of state agencies into a smaller number of executive departments that would report directly to the governor.

Key terms and Concepts

appointment powers – the power of the chief executive, whether the president of the United States or the governor of the state, to appoint persons to office.

attorney general – an elected state official that serves as the state's chief civil lawyer

clemency – acts regarded as merciful that typically involve leniency or moderation in the severity of punishment due

comptroller – an elected state official who directs the collection of taxes and other revenues, and estimates revenues for the budgeting process.

impeachment – a process of formally accusing an official improper behavior in office, followed by a trial, and if the official is convicted, removal from office.
land commissioner: an elected state official that acts as the manager of the most publicly-owned lands.

incumbent – the person who is currently holding office; this is usually used in times of reelection.

lieutenant governor – the second-highest elected official in the state and president of the state senate

line-item veto – the power that enables the governor to strike out parts (or lines) of an appropriations bill rather than the whole of the bill..

martial law – the power to suspend civil government temporarily and replace it with government by the state militia and/or law enforcement agencies.

message power – a formal means of the governor expressing policy preferences in the "State of the State" message, a biennial budget message, and often "emergency" messages that attract the attention of the media and set the agenda for state government.

patronage – the practice or rewarding political supporters often through appointments to office **plural executive** – executive power divided among several other officials whereby a group of officers or major officials make decisions or give orders typically the responsibility of an individual executive officer or official. In Texas, the power of the governor is limited and distributed amongst other government officials.

secretary of state – the state official, appointed by the governor, whose primary responsibility is administering elections

senatorial courtesy – the Senate's tradition of honoring the objection of a senator from the same district as the nominee.

session power – the governor's ability to call the legislature into special session by the governor once the regularly scheduled 140-day session has concluded; special sessions are limited to no more than thirty days, but a governor may call an unlimited number of such sessions.

State Board of Education – an elected body responsible for setting the goals, adopting the policies, and establishing the standards for educational programs in the Texas public school system.

sunset review – the process by which the sunset advisory commission reviews the state agencies if the legislature does not pass a law for the agency's continuance, it is abolished

sunshine laws (Texas Open Records Act) – laws that require the public, including the media, to have access to a wide variety of official records and to most public meetingsof state an dlocal agencies.

Texas Railroad Commission (TRC) – the TRC oversees the supply of oil and gas from Texas, which has an enormous impact on state revenues and national energy, making it one of the most powerful regulatory agencies in the state.

veto power – the governor's power to turn down legislation; can be overridden by a two-thirds vote of both the House and Senate.

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*****updated and adapted from Kenneth Dautrich, David A. Yalof, David F. Prindle, Charldean Newell, and Mark Shomaker, *American Government: Historical, Popular, and Global Perspectives: Texas Edition* (Belmont: Wadsworth, 2009).

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8.6: Critical Thinking Questions

Question 1

The Texas Constitution creates a state government with a “plural executive” – independent executive branch officials who report directly to the voters, rather than to the governor. This was seen as a way to avoid having a governor with too much power – a priority in populist post-Civil War Texas, but Texans can pay a price in the lack of coordination and efficiency. Do you think Texas should have a singular executive with a cabinet, like the federal government? Why or why not?

Answer available at the end of this section.

Question 2

The Texas Constitution allows the governor to veto bills, but lets the state legislature override a veto with a two-thirds vote of both the House and Senate. In fact, though, a governor's veto in Texas can almost never be overridden since he can veto most legislation after the conclusion of the legislative session. Some legislators have proposed amending the Texas Constitution to allow the legislature to call itself into a special session following a governor’s vetoes for the sole purpose of considering motions to override vetoes. Is this a good idea?

Answer available at the end of this section.

Question 3

While many Texas cities have term limits for municipal officeholders, Texas has no term limits for elected officials in state government. Governors have generally stepped aside after a second term if reelected – a tradition observed until Rick Perry served more than three full terms from 2000 to 2015. Should Texas have term limits for elected officials?

Answer available at the end of this section.

Question 4

The emergency powers of a Texas governor have been on full display during the Coronavirus pandemic, with Governor Greg Abbott dealing with the crisis through a serious of executive orders. The legislature was never called into special session, and some legislators have complained about their lack of involvement. Legislators this session are considering proposing amendments to the state constitution to require the legislature to be called into special session during emergencies. Is this a good idea?

Answer available at the end of this section.

Answers

Question 1

A good answer to this question will balance the advantages and disadvantages of consolidating power in the Texas Governor’s office.

A good answer will explore the view that a government with a plural executive creates an executive branch that is “closer to the people,” giving voters a direct say in the leadership of individual state agencies but can create a lack of coordination between state offices that should share a common mission.

An exceptional answer might mention that this executive branch design is duplicated in the design for county governments throughout the state. An exceptional answer might also explore the unique check and balance of having an independently-elected Comptroller of Public Accounts, who must certify the budget created by the legislature as balanced before it can take effect.

Question 2

A good answer will discuss the peculiar timing of gubernatorial vetoes in Texas, which rules out any practical opportunity for the legislature to override it. A student may discuss the importance of checks and balances between the legislative and executive branches of state government, and the dangers of allowing any one person the power to nullify a law with no counterbalancing force. The student may also discuss the practical problems and the expense of such a special session,

and the dilution of the power of an already weak executive under Texas' plural executive state government design.

Question 3

Possible avenues for a student to explore:

- *Term limits are seen by some as a needed balance to the inherent advantage of incumbents seeking reelection, preventing elected officials from becoming "too powerful to defeat."*
- *On the other hand, some argue that term limits are inherently undemocratic. If voters want to keep someone they like in office, why shouldn't they be able to?*
- *Governors in Texas have some limitations on their power already (the plural executive), but some powers that are very strong (a veto that can almost never be overridden). Should this factor into the term limit debate?*

Question 4

The emergency powers of a chief executive are always a tricky subject. The nature of an emergency requires speed and efficiency, which is difficult in a deliberative democratic process.

A good answer to this would explore the advantages and disadvantages of giving the chief executive increased unilateral discretion during an emergency, when quick action is required. Student may want to explore a role for the state legislature during a declared emergency, though that role may be more limited than during normal operations.

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9: THE EVOLUTION OF THE LAW IN TEXAS

Learning Objectives

After you read this chapter, you should be able to:

- Trace the historical evolution of Texas courts.
- Identify the types and sources of law in Texas.
- Describe how state courts are structured in Texas.
- Compare the judicial procedures associated with civil and criminal processes.
- Evaluate the arguments around partisan elections.

James Collingsworth and Wallace Jefferson, ironic historical brothers, shared only one attribute—both were attorneys—but in almost every other way, they were diametric opposites. One was born beyond Texas's borders in a slave-holding state. The other was the descendant of slaves and a lifelong resident of the state. One served honorably in the military, then held a variety of public service posts at the local community and higher government levels. The other build no such record other than as a volunteer for service, nonprofit, and charitable organizations. Despite their differences, both men eventually held the highest judicial position on the Supreme Court of Texas. They were two very different men, bound by one historical commonality.

James Collingsworth (**Figure 9.1**) was born in Davidson County, Tennessee, in 1806, where he received his education. He studied law and in 1826 was admitted to the bar in his home state. He served as a federal attorney from 1829 to 1834. While in Tennessee, he befriended Sam Houston and Andrew Jackson. Collingsworth moved to Texas in 1834 and started his private law practice in Matagorda. He became an important figure in the Texas Revolution and a leader in the Republic of Texas. He organized a successful company of men during the Goliad Campaign of 1835, capturing the first Mexican military installation during the revolution. He received promotions and accolades for his bravery both during and after the decisive Battle of San Jacinto, where Texas won its independence from Mexico. As a result of his military service, Collingsworth was chosen as one of the signers of the Republic's peace treaty with Santa Anna.[1]



Figure 9.1 James Collingsworth. SOURCE: Washington on the Brazos Blog. *The Fearless Fifty-Nine, James Collinsworth.*

Collingsworth was a public servant long before his ascension to the bench. He was a representative to the Convention of 1836, where he introduced a resolution to name Sam Houston as commander in chief of the Texas Army. He signed the Declaration of Independence and served on the committee that drafted the constitution of the new Republic of Texas, which established a court system and provided for a supreme court. The Texas Constitution also contains basic principles for the operation of the state government and legal system. It separates the powers of the government by dividing it into three distinct branches or

departments:

legislative, executive, and judicial. Even though the judicial branch is the smallest of these three branches, it serves the very critical role of interpreting the law and resolving legal disputes. The judicial branch of Texas government includes the court system of the state and all judicial agencies, such as the Office of Court Administration.[2]

It is undisputed that Collingsworth believed that slavery should be allowed in Texas and that "persons of African derivation and that all persons of that description [now] in Texas and held as Slaves [were to] be respected as the property of their respective owners."[3] At its first session in December 1836, the Congress of the Republic elected Collingsworth as chief justice.[4]

Although he was the court's first justice, his death preceded the actual opening session of the court, and he never wrote an opinion on behalf of the state's citizens. The 1876 law establishing Collingsworth County (original population, six) misspelled Collinsworth's name in the process. Collinsworth's current monument in Houston's Founders Memorial Park does spell his name correctly. However, the stone memorial was placed "at random" in 1936 (not 1931, as almost universally stated). His actual gravesite is unmarked.[5]

Wallace Jefferson (**Figure 9.2**) is the great-great-great grandson of Shedrick Willis, an enslaved person who was owned by a Waco, Texas, judge before the Civil War. After the war, Willis served on the Waco City Council for two terms. Jefferson was born in San Antonio, where he graduated from a local high school. He completed his undergraduate in Michigan and earned his law degree from the University of Texas School of Law. After practicing law as an appellate attorney in a local law firm, Jefferson cofounded an appellate law firm that became one of the most preeminent appellate practices in Texas.[6]

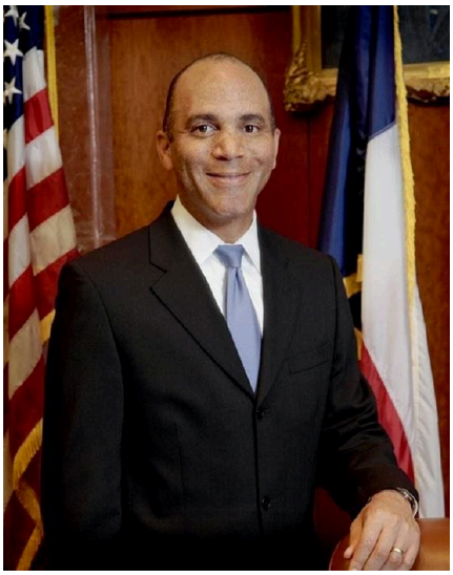


Figure 9.2 Wallace Jefferson. SOURCE: "Wallace B. Jefferson." *Wikipedia*. Accessed 6 October 2020.

Jefferson made history as the first African-American to become first a justice and then chief justice of the Supreme Court of Texas. Republican Governor Rick Perry initially appointed Jefferson as a justice to the court in 2001 to fill the vacancy left by another San Antonio native, Alberto R. Gonzales. Jefferson was then elected to the same post in 2002, At the age of forty- one, Jefferson became the twenty-sixth chief justice of the court when he was appointed to that position after Chief Justice Tom Phillips retired from the court in 2004. In November 2006, Jefferson was elected to that post, receiving more votes than any other non-federal candidate for statewide office. Not surprisingly, Jefferson was overwhelmingly reelected, and he remained in that position until 2013.[7]

Evolution of the Texas Court System

Since its inception, under Spanish and then Mexican rule, the area now known as Texas has undergone a judicial history that can be characterized as a haphazard evolution. Even before Texas became its own Republic, Texas had a system of courts. As citizens of Mexico, Texans were given access to state and local courts created by the Mexican Constitutions of 1824 and 1827. Judicial power was vested in the municipal *alcalde*, a name borrowed from an Arabic word meaning "the judge." An *alcade* was an elected official who held executive, legislative and judicial duties in and around a municipality. His decisions were not final,

however, and could be appealed to the *ayuntamiento*, the judicial mayor, who served as chief assistant to the governor, or to the governor himself. Appeals were handled only in Saltillo, over 600 miles from the northern parts of the state.[8]



Figure 9.3 Juan Nepomuceno Seguin was a Spanish-Tejano political and military figure of the Texas Revolution who helped to establish the independence of Texas. He was elected Alcalde of San Antonio in December 1833 before the Texas Revolution. State Preservation Board, Austin.

Following the Texas Revolution, when Texas became an independent republic in 1836, the newly independent government established a judicial system based on Anglo-American common law. The Constitution of the Republic of Texas designated the Supreme Court of Texas (as the highest court in the land. The court consisted of a chief justice and eight associate justices. The associate justices also served as district judges of the newly created eight district courts of Texas. The district judges, whose first session was January 13, 1840, served with the chief justice as associate justices from 1840-1845 (when Texas was admitted into the United States). Since then, Texas's court system has evolved in a piecemeal fashion.

The Supreme Court was restructured at least four times. Some courts (called *commissions*) were created on three occasions and subsequently eliminated, never to be seen again. The number of judges of various courts at multiple levels has also changed, some as late at the 1980s. The state's high court evolved from a nomadic collection of judges—traveling to various Texas cities—to a court that finally settled at its current, permanent home in Austin. Its part-time, nine-month meetings ultimately became annual, full-time sessions. An additional court—the Texas Court of Criminal Appeals—was added to relieve the burden of the Supreme Court, which was overwhelmed with cases on appeal. When that strategy proved futile, even more intermediate appellate courts—the **courts of appeals**—were created as part of yet another restructuring effort. With these changes came modifications in the jurisdiction of the state's non-trial, appellate courts.

No one could envision the possibility that the current court system would include sixteen appellate courts—fourteen courts of appeals, the Texas Supreme Court and the Texas Criminal Court of Appeals—as well as over 1,800 county administered courts and nearly 950 municipal courts overseen by over 3,200 justice and judges. Even though the structure of the state's court system may not substantially change, one thing about the judiciary is a certainty: demographic statistics indicate that the state's population increased nearly seventeen percent during the ten years since completion of the 2010 Census (to approximately 29.5),[9] and the 2020 Census is expected to support demographer predictions of more growth, Recent trends lead demographers to predict that the number of people in Texas will increase to 54.4 million people by 2050.[10] The courts' workloads will also dramatically increase because of the anticipated litigiousness of the state's ever growing population. As the number of residents exponentially increases, therefore, so too must the number of courts that have yet to be created by the Texas legislature.

9.1: Types of Law and Jurisdiction
9.2: The Structure of the Texas Court System
9.3: Texas Legal Process

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9.1: Types of Law and Jurisdiction

Types of Law: Sources and Jurisdiction

Sources of law in Texas include constitutional law, statutory law, common law, administrative regulations, and local codes and ordinances. **Constitutional law** is the body of law which defines the role, powers, and structure of different entities within a country or state, including the executive, legislature, and the judiciary branches. It also defines and describes the basic rights of citizens and the relationship between the central government and state, provincial, or territorial governments. In Texas, constitutional law includes both the national and the Texas Constitution.

Statutory law consists of the laws passed by some legislative body. Statutes are often codified, meaning that the statues are compiled into a formal, written code that informs the public of acceptable and unacceptable and unacceptable behavior. Statutory law includes both the laws passed by the U.S. Congress and by the Texas legislature.

Common law, sometimes called *case law* or *court precedent*, is law that is based on judicial decisions rather than law based on constitutions, statutes, or regulations. Case law concerns unique disputes resolved by courts using the concrete facts of a case. By contrast, statutes and regulations are written abstractly. *Case law*, used interchangeably with *common law*, refers to the collection of precedents and authority set by previous judicial decisions on a particular issue or topic.[11]

Administrative law is the body of law that governs the regulates the activities and procedures of government agencies. It is usually created within the numerous agencies, panels, boards and commissions that run the daily operation of the government. Government agency action can include rule making, adjudication, or the enforcement of a specific regulatory agenda. Texas administratively operates under national regulations like the Federal Register, the Code of Federal Regulations, the United States Code, and the Texas Administrative Code (TAC). The TAC, a compilation of all state agency rules in Texas, is comprised of seventeen titles, and of which represents a subject category and the agencies related to that category.[12]

There are two basic types of law in any legal system: civil and criminal. **Civil law** results from a disagreement or dispute between two or more individuals or organizations Civil suits often involve disagreements about money or property, but also include divorce, child custody, contracts, protective orders, and evictions. **Criminal law** involves misdemeanors and felonies. **Misdemeanors** are considered minor crimes, and **felonies** are defined as major, more serious, crimes. **Table 9.1** differentiates the two.

	CIVIL	**CRIMINAL**
Definition	Usually involves a private dispute between persons or organizations	Involves an action by an accused that is considered to be harmful to society as a while (offenses against the State that violate a specific provision of the law
Parties	Individual or business entities	Government (State of Texas, counties, or municipalities)
Attorneys	Must be privately employed	Constitutionally guaranteed if the accused cannot afford counsel
Claims	Product liability, battery and assault, breach of contract, public and private nuisances, negligence, and false imprisonment	Commitment of a misdemeanor or felony
Burden of proof	Defendant must be held responsible by a preponderance of the evidence	Defendant must be found guilty beyond a reasonable doubt

Juries	Must be requested	Constitutionally guaranteed
Jury verdict	10 of 12 must find in favor	Must be unanimous
Result	Judgment	Conviction or acquittal
Relief granted	Usually money damages	Fine, incarceration (or both), or the death penalty

State courts, which address both civil and criminal matters, are the core of the U.S. judicial system, and they are responsible for a huge area of law. Texas is no exception.

Every court system in Texas has been given some amount of jurisdiction—power or authority to hear a particular type of case. There are three broad types of those jurisdictions:

- **Original Jurisdiction** refers to the power or authority of a court to hear a case for the first time. For example, Municipal courts typically have original jurisdiction over traffic offenses the occur within city limits.
- **Appellate Jurisdiction** refers to the power or authority court to review a case that has already been heard and decided upon by a lower court. For example, a court of appeals has appellate jurisdiction over the decisions rendered by district courts.
- **Exclusive Jurisdiction** refers to the power or authority of a court to consider a case to the exclusion of all other courts. For example, only the Texas Court of Criminal Appeals can hear appeals of death penalty sentences.

Whether a court has original, appellate, or exclusive jurisdiction is determined by the provisions in the Texas Constitution and any amendments passed by the Texas legislature.[13]

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11. Tex. Admin. Code (2019), https://texreg.sos.state.tx.us/publi...ac$ext.viewtac.

12. Tex. Const. art. V.; Paul Womack, "Judiciary," Texas State Historical Society Handbook of Texas, https://www.tshaonline.org/handbook/entries/judiciary.

13. Tex. Const., art. V, § 10.

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9.2: The Structure of the Texas Court System

The Texas court system is hierarchical, meaning that cases originate in local trial courts, then proceed to other courts based upon how the courts are ranked—one above the other—according to their status or authority (**Figure 9.4**). Municipal, or city, courts address civil and criminal cases at the lowest level of the state's court system. Justice (of the Peace) courts, constitutional county courts, statutory county courts, probate courts, and district courts are administered by the counties. All of the above courts are trial courts and generally exercise original jurisdiction. Beyond them are courts that exercise appellate jurisdiction. Those courts, composed only of judges or justices, are administered by the state, and include the courts of appeals, the Court of Criminal Appeals, and the Supreme Court of Texas. The figure below depicts the current structure of the Texas court system.

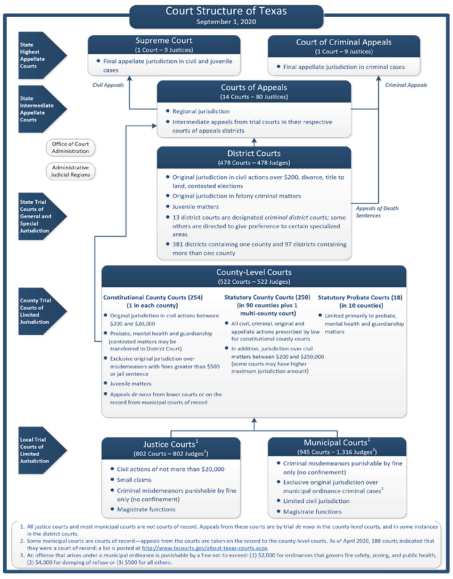


Figure 9.4 Structure of the Texas Court System. Image Credit: Texas Judicial Branch, Texas Courts Online: *About the Courts – Court Structure Chart* (2020).

Trial Courts

There are no jury trials in Texas's trial courts beyond the district courts, so a case is argued only before a panel of judges. A case in any court above the district court is argued only before a panel of judges. In civil cases, the parties are entitled to a jury trial when it is demanded by either party to the case and the demanding party pays a jury fee.[14] If no party does either, the case will be tried before a judge only.

In criminal cases, a defendant is also entitled to a jury trial.[15] The prosecutor, acting on behalf of the state, cannot take away a jury trial if one is desired by a defendant. However, a defendant can waive his or her right to a jury trial, but—in some cases—this waiver must be approved by the prosecuting attorney.[16]

Municipal Courts **Municipal courts** are city courts, often with judges appointed by mayors and city councils, which also determines their qualifications. They have exclusive jurisdiction over cases involving the violation of city ordinances, which are essentially laws passed by a city council or other governing body. Mostly, however, municipal courts handle parking and traffic tickets. Recent statistics indicate that over 5.5 million parking and traffic cases are heard in the municipal courts. In addition, these courts deal with over two million non-traffic misdemeanor cases per year. In each of these cases, the punishment is by fine only without the possibility of confinement.

County Administered Courts There are several types of county administered courts, including justice courts and county courts. County courts include constitutional, statutory courts, and statutory probate courts.

Justices of the Peace (JPs) are not required to be licensed attorneys, and a majority of them are, in fact, not lawyers. However, they are required to obtain eighty hours of continuing education during their first year in office and twenty hours annually thereafter.

Justice courts, or JP courts, are county administered courts, and the number of these courts is determined by the number of people in each country. For example, Harris County has sixteen JP courts, two of which share jurisdiction in each of the county's eight precincts. Every county has at least one JP court. JPs are the true jacks-of-all-trades in the Texas judicial system. They handle more serious offenses, like driving under the influence of alcohol, and other low-level criminal offenses, including disorderly conduct, criminal trespassing, and simple assault. They also handle civil cases (such as small claims cases) involving amounts up to $20,000, debt collection cases, commercial and residential evictions, and truancy. JP cases are appealed to the county court level. When this occurs, the appeal results in a **trial *de novo*** (a "new trial" by a different court). In criminal cases, cases beginning in justice court cannot be appealed beyond the county level court unless the fine is more than $100 or a constitutional matter is asserted.

Each of the 254 Texas counties is constitutionally required to have one constitutional county court. In the least populous counties, the constitutional county court judge fulfills the roles assumed by numerous judges in the most populous counties. For example, constitutional country courts have jurisdiction of:

- civil cases between $200 and 20,000;
- probate matters (involving wills and estates, guardianships and heirships, and matters
- involving a person who is suspected of being mentally ill and may pose a danger to him or herself, is incapable of taking care of him or herself, or may pose a danger to others);
- misdemeanors with fines greater than $500 or the possibilities of confinement;
- juvenile matters; and
- appeals *de novo* from non-record courts (courts whose proceedings are not recorded and therefore unavailable as evidence of fact).

These judges also assume the responsibilities allotted to statutory county court judges and statutory probate judges. In the more populous counties, the Texas legislature has created, through laws of a general and permanent nature, additional statutory county courts**.** The legislature has allowed counties specific numbers of these courts, depending on the county's population. Over 200 of these statutory county courts, also known as a county courts at law, have been created in more than eighty densely populated counties to assist with the responsibilities that only one court and judge could not possibly handle alone. In the most populous counties, there exist both civil and criminal courts-at-law. County criminal courts-at-law can handle cases involving up to a year in county jail, and where the fine would exceed $500. Civil courts-at-law handle disputes involving between $20,000 and $100,000, as well as civil appeals from justice of the peace courts.

Statutory probate courts have been created by the Texas legislature to account for the vast number of people who live in the ten most populated areas of the state. These courts have jurisdiction over their respective counties' probate matters (relating to wills and estates), guardianship and heirship cases, and mental health determinations and commitments. As previously mentioned, in less populated counties, these matters are handled by the local constitutional or statutory county court judges.

District Courts **District courts** represent the highest state courts where jury trials occur. District courts in rural Texas can be all-purpose courts—hearing all types of criminal and civil cases. District courts in urban areas often specialize. For example, in Harris County, with its population of almost 4.8 million, has courts specifically assigned only to criminal cases, with others specifically assigned to civil, juvenile, and family cases. District judges are elected in partisan elections and serve four-year terms. The most serious criminal cases and the highest dollar civil cases are tried in the district courts. If a felony is alleged in a criminal case, it must be tried in a district court to the exclusion of all other courts. This includes felony criminal cases in which a convicted person can receive state prison incarceration or the death penalty. In addition, civil cases involving more than $200 can be heard by district courts. It is important to note that because this amount of money also coincides with jurisdictional amounts of other courts in the state, those courts have what is known as *concurrent jurisdiction*. When this occurs, whoever brings the lawsuit can engage in "forum shopping," a phenomenon that occurs when parties will try to have their civil or criminal case heard in the court that they perceive will be most favorable to them.

These courts also have exclusive jurisdiction over disputed land title cases, **contested elections** (e.g., when one candidate requests a post-election recount because the difference between number of votes received by the person bringing the lawsuit and number of votes received by the person elected is less than ten percent of the number of votes received by the person elected),[17] and about seventy-four percent of the juvenile cases brought in the state. Divorces must also be resolved in district courts. As a result, district courts address a large volume of family law disputes which come before the courts for resolution. The issues not only include dissolution of marriages, but also the division of community property and debts, orders concerning possession and support of children, modification, enforcement of prior orders affecting children, and family violence and protective orders.[18]

Appellate Courts

Appellate courts include courts of appeals and the Texas Criminal and Texas Supreme Court.

These courts have jurisdiction to consider civil and criminal cases that are appealed from the lower district or county courts.[19]

Courts of Appeals Texas has fourteen courts of appeal located in thirteen geographic regions of the state. Each of these courts serves a specific set of counties. The judges who serve on these courts are called justices. The number of justices ranges from three to thirteen, one of whom is the Chief Justice, who serves as the administrative head of the court. Almost every county is located in a single court of appeals district. Justices are elected for six-year terms with an unbalanced staggering of terms in partisan elections. The terms are staggered so that approximately one-third of the positions on each court are considered by the voters who live in the region governed by that particular court of appeals for reelection every two years. Vacancies between elections are filled by the governor, who appoints a person to fill the vacancy with the advice and consent of the state Senate.

The caseload for courts of appeal in Texas is staggering. While the district courts from which a court of appeals' appellate cases are referred may be highly specialized, the courts of appeals are not. In recent years, the fourteen courts of appeals have heard over 10,000 cases annually. For the sake of efficiency, nearly all cases are heard by multi-judge (usually three) panels, which are chosen immediately after an appeal is filed. This process allows the court to triple the number of cases it can consider at any one time. All fourteen courts have intermediate appellate jurisdiction over every type of criminal and civil case, with one exception. When the death penalty is giving to an accused in a district court, that case proceeds to the Texas Court of Criminal Appeals rather than a court of appeals.

Recall that there are no jury trials in Texas's trial courts beyond the district courts, so a case is argued only before a panel of judges. The appeals heard in these courts are based upon the "record" (a written transcription of the testimony given, exhibits introduced, and the documents filed in the trial court) and the written and oral arguments of the appellate lawyers. The courts of appeals do not receive testimony or hear witnesses in considering the cases on appeal, but they may hear oral argument by the attorneys on the issues under consideration. The courts of appeals both review the decisions of lower court judges and juries and evaluate the constitutionality of the statute or ordinance upon which the conviction was based. The outcome of an appeal is dependent upon whether an error occurred at the trial and, if so, whether that error resulted in an improper result. Decisions of the courts of appeals are usually final, but a small percentage of those decisions are reviewed by the two highest state courts.

Texas is one of only two states to utilize a bifurcated (split into two) appellate court system, meaning that the top-tier structure of the court system is divided into two courts whose exclusive jurisdiction focuses on appeals for criminal and civil cases. These two courts are not only responsible for reviewing the decisions made by lower courts judges and juries but also for interpreting and applying the state constitution. Therefore, the power of constitutional interpretation gives these courts the name of *courts of last resort* and provides them with vital judicial and political importance to the state. In addition, the courts publicly announce rules of appellate procedure and rules of evidence for civil and criminal cases and administer public funds are appropriated by the legislature for the education of judges, prosecuting attorneys, criminal defense attorneys who regularly represent indigent defendants, clerks and other personnel of the state's appellate, district, county level, justice, and municipal courts.

Texas Court of Criminal Appeals The Texas Court of Criminal Appeals is the highest court in the state that reviews criminal cases only, including automatic appeals on behalf of those convicted of felonies who receive the death penalty. The Chief Justice and remaining eight justices are chosen by partisan, statewide elections for staggered, six year terms. Vacancies between elections are also filled by the governor, who appoints a person to fill the vacancy with the advice and consent of the state Senate.

When a party loses at a lower court (usually when relief at a court of appeals is denied), he or she must file a petition for discretionary review to the Court of Criminal Appeals within thirty days. If the Court of Criminal Appeals grants a petition, it will schedule the case for oral argument and thereafter render its decision in the case. All nine members of the court are present for oral arguments.

Supreme Court of Texas The Supreme Court has statewide, final appellate jurisdiction in most civil and juvenile cases (**Figure 9.5**). The composition, structure, number of justices, method of election, term of office, and qualifications are identical to that of the Court of Criminal Justice and its members. Much of the Supreme Court's time is spent determining which petitions for review will be granted, as it must consider all petitions for review that are filed. The Supreme Court exercises substantial control over its caseload in deciding which petitions will be granted. The Supreme Court usually takes only those cases that present the most significant Texas legal issues in need of clarification. However, the number of cases added to the Supreme Court's docket has consistency increased.



Figure 9.5 Texas Supreme Court. SOURCE: The Texas Supreme Court courtroom. Supreme Court of Texas modifies COVID-19 civil case filing deadlines. Dallas Business Journal (2020).

In addition to the duties it shares with the Court of Criminal Appeals, the Supreme Court publicly announces rules of administration to provide for the efficient administration of justice in the state, monitors the caseloads of the courts of appeals and orders the transfer of cases among the courts in order to equalize the courts' workloads, appoints the Board of Legal Examiners (which prepares and oversees the grading process of the State Bar examination), certifies successful applicants who are entitled to practice law in the state, and, with the assistance of the Texas Equal Access to Justice Foundation, administers funds for the Basic Civil Legal Services Program, which provides basic civil legal services to people who are indigent.

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14. Tex. Const., art. I, § 10.

15. Tex. *Code Crim.* Proc. *art.* 1.13 (1965).

16. Texas Secretary of State, *Procedures to Request and Conduct a Recount* (2020), https://www.sos.state.tx.us/election...recounts.shtml.

17. *Texas Divorce Statistics*, SSJM Family Law (2021), https://www.kantlaw.com/texas-divorce-statistics/.

18. Paul Womack, "Judiciary," https://www.tshaonline.org/handbook/entries/judiciary.

19. *Personal Audio, LLC v. Apple, Inc., et al.,* No. 9:09-CV-00111-RC (E.D. Tex. 2010).

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9.3: Texas Legal Process

If you are a registered voter or hold a valid Texas driver's license, the chance is very good that you will one day be called for jury duty by your county or district clerk. You will be asked to appear at the country courthouse on a specific day to make yourself available for jury service. You might be part of a jury for either a civil or a criminal proceeding. If, and when that happens, you should familiarize yourself with how either civil or criminal processes transpire.

Texas Civil Processes

The civil justice system is meant to be like a balanced scale, with neither side having any special advantage. The party bringing the civil suit—the complaining party—is the plaintiff. The party being sued is the defendant. In addition to the parties, civil cases also involve a number of players: judges, attorneys, lay and expert witnesses, jurors, local government clerks, court reporters, and bailiffs, among others.

The Texas Rules of Civil Procedure lay down the rules that govern civil actions. The rules are promulgated for a just, fair, equitable and impartial adjudication of the rights of litigants under established principles of substantive law by the state courts. Civil lawsuits can often take complex and unpredictable routes through the legal system, and many can proceed through as many as eight different stages before reaching a conclusion. For example, one of the biggest recent civil cases in Texas was Personal Audio of Beaumont, Texas, vs. Apple, Inc. Personal Audio, claimed Apple had stolen its playlists for its iPod, iPad, and iPhones in a case of patent infringement. Because it was victorious in that lawsuit, Personal Audio received an eight million dollar settlement from the megacompany.[20]

Here are the typical, basic steps of a civil lawsuit: investigation, pleadings, discovery, pre-trial, trial, settlement, appeal, and enforcement of judgment.

Investigation All civil litigation goes through this initial investigation phase. The attorneys for the parties will typically be responsible for the investigation, and they may work with a private investigator as well. During this stage of the case, the party who has allegedly suffered some kind of harm will determine whether a lawsuit is warranted. If so, the lawyers will look for supporting evidence that can help their clients win or successfully defend their cases. This can include things such as evidence from an accident scene, medical records, and interviewing witnesses informally.

Pleadings Pleadings are the documents that are usually filed in order to initiate a lawsuit. Every person involved in a civil lawsuit files a pleading that details their side of the case. In Texas, the first and, typically, the most important of the pleadings is called the *Original Petition*. Petitions must be filed within two to four years of the act that serves as the basis of the lawsuit, depending on the type of lawsuit that is being brought by the plaintiff.

A petition will discuss the essential facts of the case, the legal issues, and a review of all alleged damages suffered. A copy of the plaintiff's lawsuit must be delivered to the defendant before the defendant has any obligation to respond. Once served, however, the defendant is officially put on notice that a lawsuit has been filed and has thirty days to file what is typically called an *Original Answer*. When that happens, both parties have made an official appearance in the case, and the lawsuit proceeds as usual. However, if the defendant fails to respond to the petition within thirty days, the court may issue a default judgment in favor of the plaintiff. At that point, the plaintiff is no longer required to prove the defendant's responsibility (which is, by the defendant's inaction, admitted). The only unresolved matter is the damages the plaintiff can obtain.

Discovery The **discovery** stage of civil litigation involves fact gathering. Both sides involved in the case are able to formally exchange information about the upcoming trial during discovery. The discovery phase of a case helps prevent surprises during the trial and allows both sides to prepare equally. However, discovery is not without limits. Certain types of information are

generally protected from discovery, including information which is privileged (such as attorney- client communications, trade secrets, and conversations between spouses) and the work product of the opposing party and his attorney. Other types of information may be protected, depending on the type of case and the status of the party (juvenile criminal records, certain medical and psychiatric records, for example).

The parties, through their attorneys, may obtain evidence from the opposing party and others by means of discovery devices, including requests for answers to interrogatories, requests for production of documents and things, requests for admissions, and

depositions.

- Interrogatories ask open-ended questions for the other party to answer. For example, one may ask the other party to identify all evidence upon which they intend to rely in support of their claims or defenses.
- Requests for production allow one party to ask the other to provide documents or other tangible evidence, including electronically stored information. This is the process used to actually obtain most of the physical evidence that the parties will rely on when they move toward trial.
- Requests for admission ask another party to admit or deny certain carefully worded questions. For example, one party may ask the other to admit certain specific facts related to an incident that would tend to prove that party's liability (fault). Requests for admissions allow a party to delve deeper into issues beyond those required to state a cause of action, such that certain reasonable inferences can be drawn.
- **Deposition** is the process of taking live testimony from witnesses and parties before trial. The witness or party is required to appear and testify under oath before a court reporter who records the entire proceeding. These proceedings are usually done in an attorney's office with representatives of both or all of the parties in attendance. While the testimony and questioning are governed by the usual rules of evidence, with no judge present to rule on any objections, they are usually just recorded by the court reporter and dealt with later if the testimony is introduced at trial. The court reporter transcribes depositions into booklets, the substance of which can be used at trial as if the deponent (the person offering the deposition testimony) was in trial if, in fact, he or she is absent.

Interrogatories, requests for production, and requests for admission and depositions are integral parts of the pre-trail discovery process.

Pre-Trial During this pre-trial stage of the case, the judge will determine whether contested pieces of evidence are admissible or inadmissible and whether witnesses will be considered as expert witnesses (witnesses with unique educations, expertise, experience, or other specialized skill sets whose opinion may help a jury make sense of the factual evidence of a case) or lay witnesses (witnesses who do not need to be qualified in any area to testify since their testimony about matters with which they have personal knowledge).

At this stage of the case, the attorneys for both sides enter into conferences and negotiations. In a large number of cases, the parties can reach a settlement during this stage (usually through a process called *mediation*). The plaintiff's attorney will make an initial monetary demand during this stage, and the defendant's attorney has a limited amount of time to counter that demand. The negotiations may go back and forth for some time, but the vast majority (about ninety-five percent) of cases are resolved before trial.

Trial A trial occurs when the case is not resolved during pre-trial. The trial is a formal process that allows both sides the opportunity to present their cases before a jury or judge (if neither party requests a jury trial). The first part of this stage includes the selection of the jury, assuming at least one of the parties to the lawsuit requests one. In most lower level courts, the jury will be composed of six people. In higher level courts, the jury will be composed of twelve people.

The process of selecting a jury is known as ***voir dire***. During *voir dire*, a panel of people (called a jury pool) will be questioned by the attorneys for both sides about their background, beliefs, and biases. There is a misconception that the jury is selected from this larger panel. In fact, jurors are eliminated from the jury panel by what are called *strikes*.

Each side has an unlimited number of **challenges for cause** *(strikes)*. Usually, a challenge for cause is made when a party believes a prospective juror has a bias against them or their attorney that may affect the outcome of the judgment of the case. This kind of strike is alleged by the attorneys and either accepted or rejected by the judge, who strikes or retains the prospective juror. Occasionally, the judge may attempt to “rehabilitate” the objectionable juror in order to keep that individual in the jury pool. Each side may also make a limited amount (usually six) of *peremptory challenges*. A **peremptory challenge** does not have to be explained. That is, each side can simply strike a certain number of prospective jurors from consideration. The amount of peremptory challenges varies according to the type of trial and the number of defendants.

During a civil trial, both sides can present evidence and witnesses. Attorneys for both sides can cross-examine witnesses during the trial. Because the plaintiff bears the burden of proof (meaning that he/she must prove the defendant’s responsibility by a preponderance of the evidence), the plaintiff’s attorney presents the case first. If the plaintiff’s attorney meets the necessary burden, only then does the defendant have the responsibility of presenting his/her case to the jury. If the plaintiff fails to meet the necessary burden of proof, the defendant may ask and receive a *directed verdict* (a verdict that is, as a matter of law, directed in favor of the defendant without the involvement of the jury). The outcome of a civil case is called a *judgment*. ***Settlement*** During any trial (or any other juncture of lawsuit), a settlement may be reached between the parties. As mentioned earlier about ninety-five percent of pending lawsuits end in a pre-trial settlement. If the settlement occurs during a trial, only the fact that the

case has been resolved will be announced by a judge because, except in extraordinary circumstances, the terms of settlements are confidential. This settlement is considered a final outcome since all the parties have agreed to its terms.

Appeal If a party loses a lawsuit, that party's attorney may file a Notice of Appeal (within thirty days of the Judgment) alleging that an **error of law** (committed by the trial judge) or an **error of fact** (committed by the jury) led to the rendition of an improper judgment. If no such error of law or fact occurred during the trial, there are no valid grounds for appealing the case. Typically, appeals move more quickly than the original case once they begin because the attorneys already have the benefit of having all the evidence and necessary information close at hand since it was recently needed for the original case. Once a party files for appeal, the party will not be required to comply with the court's judgment because an appeal acts like a freeze on the judgment. ***Enforcement of a Judgment*** Winning at trial does not necessarily resolve the legal issues if the primary goal of the plaintiff is to recover money from the defendant. If a judgment is entered on behalf of the plaintiff, that party is entitled to the amount of the judgment awarded by the jury. However, the prevailing party may encounter problems when trying to recover the money from the losing party. In that case, the plaintiff may be forced to commence collection proceedings against the losing party. This process begins with the filing of an Abstract of Judgment with the county or district clerk. In Texas, an **Abstract of Judgment** preserves a judgment for a period of ten years. As long as the defendant fails to pay the plaintiff the amount determined in the judgment, interest accrues on that amount.

Controversies: Tort Reform Civil claims include, but are not limited to, torts. A **tort** is an act or omission that gives rise to injury or harm to another and amounts to a civil wrong for which courts impose liability. In the context of torts, *injury* describes the invasion of any legal right.[21] More specifically, torts are claims for any wrongful act that entitles an injured person to compensation. These claims include, among others, all personal injury cases that include assault, battery, trespass, false imprisonment, negligence, nuisance, defamation, invasion of privacy, and products liability.[22]

Since the 1970s, Texas has been embroiled in a continuing controversy relating to the issue of tort reform. Tort reform is a movement among some Texans who believe that laws should be changed in the civil justice system so that the volume of tort litigation and the damages resulting from those types of lawsuits are reduced. Generally, tort reform advocates want to make it more difficult for injured people to file a lawsuit, limit the amount of money or damages that injured people may receive as compensation for their injuries in a lawsuit, reduce damages that punish wrongdoers (punitive damages), and make it more difficult to obtain a jury trial.[23]

Tort reform was originally spearheaded by insurance companies and large corporations, who sought to attack the civil justice system and change rules of law, not through adjudication of cases over time, but through public perceptions and legislation limiting personal injury lawsuits.[24] Those who advocated for tort reform sought to persuade the public that the civil justice system was unfair and corrupt and that its operations had adverse effects on the economy. They created advertisements and lobbying campaigns that supported the notion that the judicial process is biased towards plaintiffs, resulting in high liability insurance premiums. Conservative

politicians took on this cause, incorporating a change of the civil judicial system into their platforms."[25]

In 2002, a conservative surge of voters ushered in Rick Perry to his first full term as governor, as well as a large class of freshman members in the House (led by Tom Craddick, then speaker of the House). Perry, conservatives in the Texas House, and a collection of lobbyists acting on behalf of a number of corporate interests, including insurance, oil and gas, pharmaceutical, medical, tobacco, liquor, chemical, nuclear waste, and construction companies, industry lobbyists powerfully led the way for tort reform.[26]

The public face of these lobbyists was the group Texans for Lawsuit Reform (TLR). TLR successfully advocated that justice administered by partisan, well-financed judges, resulted in inordinately excessive judgments which favored not only plaintiffs but also their attorneys. Perception against the manner in which civil cases were litigated had direct impact upon the state. Insurance companies placed surcharges on insurance issued in the state (resulting in higher premiums), and businesses hesitated to locate or expand in the state.[27]

In June 2003, Governor Rick Perry signed a bill into law that would significantly change the landscape for medical malpractice litigation in Texas. House Bill (HB) 4—commonly referred to as *tort reform*—was enacted to curtail frivolous lawsuits, limit runaway jury awards, and reduce malpractice liability insurance premiums.[28]

At that time, The Texas House and Senate were overwhelmingly dominated by Republicans. Predictably, tort reform in Texas has resulted in fewer lawsuits, smaller payouts to plaintiffs, and—to the benefit of physicians and other members of the health care

community— significantly lower malpractice premiums.

Coupled with widespread public support, which favored—and still favors—lawsuit reform, legislators who advocated on behalf of TLR's goals have consistently embraced and financed candidates for the elected members of all three branches of government.

Opponent of tort reform contend that restrictive legislation limits plaintiffs' ability to seek full financial justice. They also claim that instituting restrictions and maximum caps on damages disregards each case's unique circumstances and ultimately legitimately injured plaintiffs who may sense the need to settle cases rather than to try them to completion in the courts. Further, they suggest that increased insurance rates are a function of much more than the number of successful tort-related lawsuits.

Tort reforms have remained intact since HB 4 was signed by Governor Perry. The Republican Party's dominance in the legislature has proved to be, thus far, an insurmountable hurdle to opponents of tort reform, as more than fifteen additional pieces of legislation that discouraged the filing of tort lawsuits (e.g., passing a law that required the loser in a lawsuit to pay the attorney's fees of the prevailing party) and restricting the ability of plaintiffs to pursue and win big-ticket personal injury claims have been passed.

Texas Criminal Processes

In the criminal justice system, the Texas court system must account for and address two conflicting goals: the need to protect the health, welfare and safety of the state's people and the requirements to protect the rights and liberties of the accused. Unlike the civil court system, which strives for balance, the state's criminal system incorporates an intentional bias in favor of the accused. In addition, the state must ensure that every person is treated equally in legal matters. This fair treatment through the normal judicial system, a general right to which each citizen is entitled, is known as **due process**. The Texas Code of Criminal Procedure lays down the rules that govern the criminal justice process. The issues addressed by the Texas Code of Criminal Procedure include, among others: courts and criminal court jurisdiction; the proper location for trials; arrest and bail; search warrants; trial procedures; courts costs, fees, fines, and restitution; appeals; as well as the prevention and reduction in the number of offenses.[29]

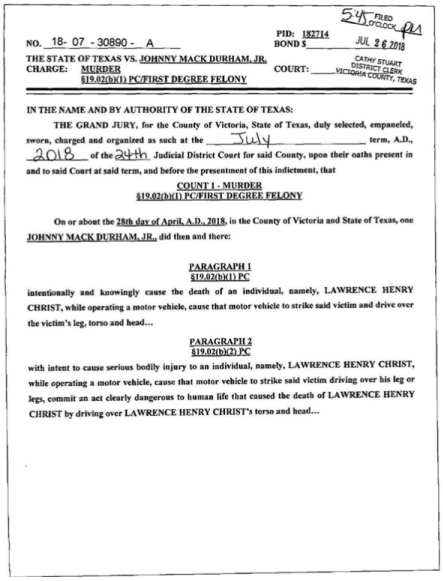
A criminal proceeding will follow the same stages of investigation, pleadings (called an *arraignment* in the criminal justice process), discovery, pre-trial hearings, trial, judgment, and appeals, but there are differences. The most significant difference is that the investigation is largely handled by the police, the defendant is arrested, and, if convicted, the punishment in a criminal proceeding is separate from the judgement of guilt or innocence and can include incarceration or even the death penalty. In Texas, as in most other states, the criminal process can take months or even years.

Arrest Unlike in a civil case, the local police or sheriff's department will normally investigate a case. The primary mechanisms used by law enforcement when investigating crimes are interviews of potential eyewitnesses, custodial interrogations of suspects, recorded observations, and collecting and preserving physical and forensic evidence at the crime scene. In some occasions, law enforcement officials are able to arrest a person accused of a crime at the scene of the alleged offense. But in other cases, law enforcement officials must rely on prosecutors to procure arrest warrants. In many cases, this type of arrest is based upon probable cause—the reasonable belief that a crime has been committed or is about to be committed. In such cases, law enforcement officials complete a sworn affidavit about the facts they have gathered in conjunction with their investigation. That affidavit serves as the basis for a prosecutor's argument to a judge that an arrest warrant should be issued. An arrest warrant is a written order from a judge directed to a peace officer or some other person specially named to take an individual into custody. The arrest warrant is executed when the alleged perpetrator is arrested.

Prosecutorial Review If an accused it not yet arrested by law enforcement officials, once the investigation is substantially completed, those officials will present the case to the county attorney or district attorney, depending on the severity of the offense alleged. These conduct a prosecutorial review to determine whether there is enough evidence to charge the suspect with an offense, and if so, what type of offense. They also review the case and determine if there is enough evidence to proceed to court look for possible legal problems that may affect the case. These attorneys may also request additional investigation or information if they believe the potential case is questionable.

Complaint, Information, or Indictment A complaint is a document that officially charges a person with a crime. It must be sworn to by someone with knowledge of the crime. If there is sufficient evidence, and the law supports a criminal case, the suspect may be charged with a crime by a legal document called an *information*. An **information** is a formal charging document typically used for more minor crimes.[30] The prosecutor may file an information and obtain an arrest warrant from a court for the accused if that individual has not already been arrested. An information is often the charging document used by prosecutors in misdemeanor cases.

Grand juries are provided for in Article 1, Section 10 of the Texas Constitution and are required for felonies. A **grand jury** is not a typical jury as most people think. It does not serve for the entire length of a trial, nor does it determine the guilty or non-guilt of an individual. Rather, its sole purpose is to determine whether there is sufficient evidence to bring a formal charge against an accused. A grand jury is secretly convened by the county. An explanation of the law and the evidence that has been reviewed by the jurors is offered by a prosecutor, whose legal obligations are far less than they are in a traditional jury setting. The accused, but not his or her attorney, may be present at a grand jury proceeding, but that individual may not introduce evidence, examine witnesses, or do anything else but play the role of spectator. If the prosecutor convinces only nine jurors that an accused should be formally charged, the resulting document is an called an **indictment,** which is also called a "true bill" (**Figure 8.6)** If the prosecutor fails to present sufficient evidence to convince the grade jury to indict, this results in a "no bill."[31]



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JUL 26 2018
CATHY STUART DISTRICT CLERK VICTORIA COUNTY, TEXAS

NO. 18- 07 - 30890 - A
PID: 182714
BOND $
THE STATE OF TEXAS VS. JOHNNY MACK DURHAM, JR.
CHARGE: MURDER §19.02(b)(1) PC/FIRST DEGREE FELONY
COURT:

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURY, for the County of Victoria, State of Texas, duly selected, empaneled, sworn, charged and organized as such at the July term, A.D., 2018 of the 24th Judicial District Court for said County, upon their oaths present in and to said Court at said term, and before the presentment of this indictment, that

COUNT 1 - MURDER
§19.02(b)(1) PC/FIRST DEGREE FELONY

On or about the 28th day of April, A.D., 2018, in the County of Victoria and State of Texas, one JOHNNY MACK DURHAM, JR., did then and there:

PARAGRAPH 1
§19.02(b)(1) PC

intentionally and knowingly cause the death of an individual, namely, LAWRENCE HENRY CHRIST, while operating a motor vehicle, cause that motor vehicle to strike said victim and drive over the victim's leg, torso and head...

PARAGRAPH 2
§19.02(b)(2) PC

with intent to cause serious bodily injury to an individual, namely, LAWRENCE HENRY CHRIST, while operating a motor vehicle, cause that motor vehicle to strike said victim driving over his leg or legs, commit an act clearly dangerous to human life that caused the death of LAWRENCE HENRY CHRIST by driving over LAWRENCE HENRY CHRIST's torso and head...

Figure 9.6 True Bill. SOURCE: Photo by Jon Wilcox, Victoria Advocate.

Arraignment An **arraignment** is a post-arrest court proceeding at which a criminal defendant is formally advised of the charges against him or her and is asked to enter a plea to the charges. In Texas, the court may also decide at an arraignment whether the defendant has employed, or is financially capable of employing, an attorney. Once the lack of financial resources is alleged and proven, a court will declare the accused as *indigent* and will appoint an attorney to represent the defendant.

Discovery The same discovery (interrogatories requests for production, requests for admission, and depositions) may be conducted in a criminal case. Two additional types of evidence that may exist in a criminal, but not a civil, case are inculpatory evidence and exculpatory evidence. Any evidence favorable to the prosecution in a criminal case is **inculpatory evidence**, and any evidence that is favorable to the defendant in a criminal case is considered **exculpatory evidence**—evidence tending to excuse, justify, or absolve the alleged fault or guilt of a defendant. If, during the police investigation preceding trial, a witness was interviewed who claimed that another person, not the defendant, committed the crime, that witness interview is exculpatory evidence. Another example of exculpatory evidence would be DNA evidence on a knife in a murder case that links another individual to a crime.

Often the defendant will file pre-trial motions to "discover" the evidence held by the police and the attorney for the state. This evidence includes both inculpatory evidence and exculpatory evidence. The prosecutor is required to produce exculpatory evidence to the defendant's attorney, but only if the defendant's attorney specifically requests that information. Otherwise, the prosecutor has no legal obligation to supply it. This necessity has been mandated since the U.S. Supreme Court decided the case of *Brady v. Maryland* (1963).[32]

Pre-Trial The progress of most cases is determined by pre-trial orders, orders setting forth the procedural framework of a case to be tried, including a number of deadlines for specific tasks to be completed by the parties' counsel. Thus, in addition to the state and local laws and regulations attorneys are required to follow pertaining to their conduct and the manner in which cases are conducted, they are also responsible for abiding by the provisions of a court's pre-trial order. Among the court's requirements is the parties' appearance at a pre-trial conference.

During the pre-trial phase, a hearing between the judge and attorneys for the parties will occur shortly before the trial begins. It is during this hearing that the judge will rule on "evidentiary issues," issues that relate to the admissibility or inadmissibility of

evidence and the qualification of certain witnesses as expert witnesses. Often the defendant will file pre-trial motions to *discover* the evidence held by the police and the attorney for the state, and may file other motions to *suppress* evidence that the defendant claims should not be used at trial. The court often requires hearings on these motions that are often recording by the court reporter. These evidentiary hearings assist the court and the attorneys to more efficiently—with fewer legal interruptions—move the case through the trial.

The defendant and the prosecutor may enter into a **plea agreement**—any agreement in a criminal case between the prosecutor and defendant whereby the defendant agrees to plead guilty or nolo contendere (no contest) to a particular charge in return for some concession from the prosecutor)—at any time during the course of the trial. A plea agreement, however, must be approved by the judge. If no plea agreement occurs, the case proceeds to trial.

Trial Once a case goes to court, it may appear a number of times on the court's docket before it actually proceeds to trial. Once the court is prepared to hear the case, the jury selection process is similar to that in a civil case. For example, in a criminal *voir dire*, the judge and attorneys for both sides have the opportunity to ask potential jurors questions to determine if they are competent and suitable to serve in the case. However, there is one extraordinary distinction. Prosecutors may not use peremptory strikes to strike jurors from the jury pool based solely on the jurors' race. This matter was considered by the U.S. Supreme Court in the case of *Batson v. Kentucky* in 1985.[33] The defendant's attorney may challenge the sitting jury on this basis. A ***Batson* challenge** is an objection to the validity of the prosecutor's use of peremptory challenges on the grounds that the prosecutor used those challenges to exclude potential jurors based on race, ethnicity, or sex.

The prosecution bears the burden of proving every element of each crime alleged in the case against the defendant. Until that case is fully proven by the introduction of evidence pertaining to every element of an alleged crime, the defendant bears no burden at all. Any misstep by the prosecutor during the trial could easily result in a verdict of not guilty. Also, the prosecutor must convince the jury of the defendant's guilt beyond a reasonable doubt, meaning that there must be no other reasonable explanation that can come from the evidence presented at trial but that the defendant committed the crime alleged. In addition, the jury verdict must be unanimous. This is an extremely difficulty burden for the prosecution to meet, but this requirement is justified when you consider that the punishment resulting after a conviction could be a lengthy incarceration or conceivably the death penalty.

The trial may be in front of a jury or a judge. A jury is required when the defendant's punishment, if convicted, could include incarceration. The attorney for the state will call witnesses to testify about the crime. Once the attorney for the state introduces testimony from the state's witnesses, the attorney for the defendant may cross-examine those witnesses and even call rebuttal witnesses to dispute the testimony of the prosecution's witnesses. The defendant is also entitled to call his or her own witnesses, who are also subject to cross-examination and rebuttal by the prosecution. However, the defendant is not required to introduce witness testimony, nor is the defendant required to give testimony because he or she has a constitutional right to remain silent. After all testimony has been heard, the jury must decide if the state proved its case against the defendant beyond a reasonable doubt. If so, the defendant is "guilty," a conviction occurs, and the jury proceeds to the punishment phase of the trial. If not, the defendant is declared "not guilty," and the he or she is free.[34]

Punishment Criminal trials in Texas are **bifurcated trials**, meaning they are divided into two separate parts, one for the judgment of guilt or innocence and the other for sentencing, if the defendant is found guilty. In the state, if the jury finds the defendant guilty, the second part of the bifurcated trial—the punishment phase—begins. The jury, not the judge, determines the punishment, and juries are somewhat restricted during this phase since the punishment ranges for both misdemeanor and felony criminal cases in Texas are set forth in Title 3, Chapter 12 of the Texas Penal Code.[35]

The punishment range is different for different crimes. Generally, misdemeanor crimes are punishable by time in the county jail and/or a fine, and felony crimes are punishable by time in the state prison or state jail and/or a fine. During this phase of the trial, both sides will once again offer evidence on what the proper punishment should be. The prosecution can introduce almost any information about the defendant, including information (e.g., prior criminal record, undesirable conduct, victim and other witness testimony) that tends to discredit the defendant to an even greater extent with the intent of convincing the jury to impose a much harsher sentence than might otherwise be justified. The defendant's attorney, of course, will introduce evidence that might convince the jury to soften the punishment they ultimately give the defendant. Although jail time is often assumed, there are occasions when a defendant is eligible to be released on probation and continue to live in the community while being monitored for compliance with rules set by the court and thus avoid jail or prison time altogether.

Appeals Every convicted defendant has the right to appeal his or her case to an appellate court. Generally, the defendant appeals on the grounds that some error occurred at the trial that requires a reversal of the conviction. Regardless of the reason, an appeal must be filed within 30 days of the verdict (if the case is tried before a judge and jury) or judgment (if the case is an appeal from a lower appellate court). It is not uncommon for these appeals to take months if not years. During the time when the appeal is pending, the defendant is entitled to a bond if the sentence is fifteen years or less. If the case is reversed, the court of appeals

may order a new trial. Oftentimes, because of the constitutional prohibition against **double jeopardy** and the hesitancy of some prosecutors to retry cases, the defendant "walks," never again to be tried for the same crime in the same court.

Controversies: Bail Reform Recent public attention has been directed toward the issue of **bail**, the existence and amount of which is often resolved at the arraignment. "Bail is a legal mechanism to ensure that people charged with crimes show up to their court hearings."[36] The most common type is money bail, where judicial officers set a bond amount, based on the alleged crime, that an arrestee must pay in order to be released from jail before trial. Defendants can pay the court the full amount, which is refundable, if they show up to all their court hearings. Or they can pay a nonrefundable percentage of it—usually about ten percent—to a bail bonds company that fronts the total cost of getting them released before their trial.[37] In some Texas counties, that range is prescribed by a preestablished schedule which gives a judge little or no discretion. In establishing the bail amount, the judge may also take into consideration the seriousness of the offense, the defendant's ability to make the bond, the safety of the victim, and the safety of the witnesses.

Bail can be tremendously expensive, even when obtained through a bondsman, especially for those who lack substantial or any income. Federal courts have consistently held that the Eighth Amendment, to the U.S, Constitution— "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted"[38]—prohibits the assessment of a bond set so high that it punishes defendants by unnecessarily keeping them in jail before trial. Many defendants ask courts to either lower the bail or release them under a personal recognizance (PR) bond, a written promise signed by the defendant promising that they will show up for future court appearances and not engage in illegal activity while during their release.

Local governments, including Harris County, have intervened in the assessment of bail at the local level. For years, some county officials criticized the fact that counties have relied too heavily on the monies derived from this system and that it unconstitutionally deprives the poor— who lack the cash necessarily to procure their release—of the right to be released from jail and to assist their counsel in their defense. In 2016, a lawsuit was filed against Harris County, alleging that several individuals charged with low-level offenses remained jailed because they could not afford to pay for their release. The following year, a federal judge declared this practice unconstitutional, thus prompting the county commissioners court to address the court's findings that the county's pre-trial system discriminated against poor misdemeanor defendants.[39] Part of the settlement between the county and the plaintiffs included a new policy of "automatic, no- cash pretrial release for about eighty-five percent of low-level defendants. It also added additional legal and social services for poor arrestees and help for getting them to their court dates."[40]

The issue has become even more heated due to the COVID pandemic, where those in jail are at higher risk. Many argued during COVID for early release and especially for releasing those who are being held for trial and haven't been convicted of a crime. Governor Abbott blocked the jail release, however, due to long-held concerns that inspired the Damon Allen Act. State trooper Damon Allen was killed by a man who had recently been released on bail. Abbott wants to overhaul the bail system in 2021. The controversy over jailing the poor remains.

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9.4: Judicial Selection Processes

Different states have different methods for selecting judges in the United States. Each state is unique, but there are five main methods.

- Partisan elections: Judges are identified by party affiliation on a ballot and elected by the people.
- Nonpartisan elections: Judges are elected by the people, but a party affiliation is not listed on a ballot.
- Legislative elections: The state legislature selects judges.
- Gubernatorial appointment: The governor appoints judges, though approval by the state legislature is sometimes required.
- Merit selection**:** The governor appoints judges from a list of recommendations based on their qualifications. Judges must then be elected to stay in office, a process called a retention election. The judge, who does not face an opponent, is removed from the position if a percentage of voters (often fifty percent) indicate that he or she should not be retained.[41]

Figure 9.7 demonstrates how these judicial selection methods are distributed throughout the country.

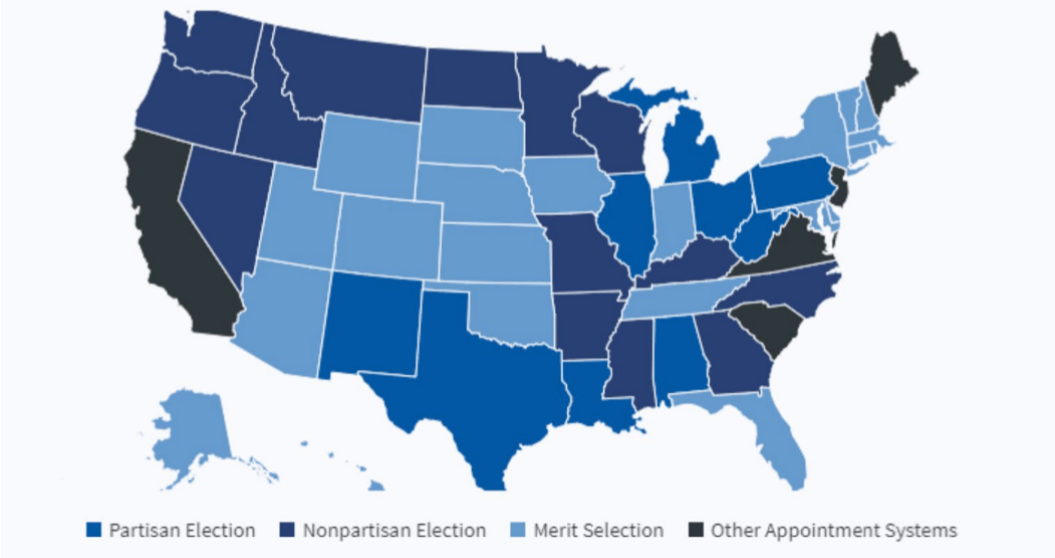


Figure 9.7 Map of State Court Judicial Selection Methods. SOURCE: Joanna Shepherd and Michael S. Kang. “Partisan Justice: How Campaign Money Politicizes Judicial Decision-making in Election Cases.” American Constitutional Society (April 2011).

In the selection of judges to their highest courts, nine states use partisan elections and thirteen states use nonpartisan elections. In twenty-eight states, the governor or legislature initially appoints judges to the highest court, with twenty-one of those states using some form of merit plan. For the retention of judges on the state’s highest court, six states use partisan elections and fourteen states use nonpartisan elections. Eighteen states hold retention elections to determine whether those judges remain in office beyond their initial term, and the incumbent judges run unopposed and must win majority approval for retention. Nine states rely on reappointment by the governor, legislature or a judicial nominating committee. Only three states grant their highest court judges permanent tenure.

Texas is one of only six states where voters select their judges (except at some of the municipal levels) in partisan elections, and **Figure 9.8** depicts the specifics relating to the judges for each level of court.

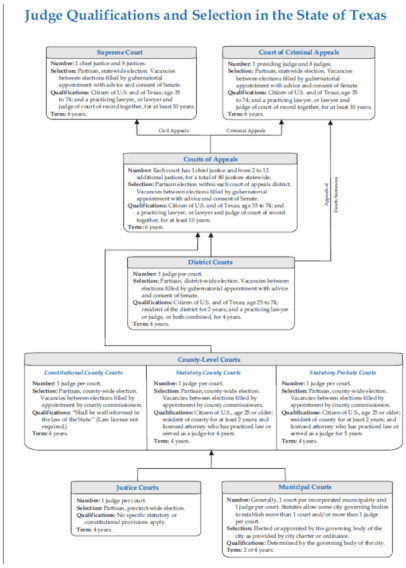


Figure 9.8 Selection and Qualification of Texas Judges. SOURCE: Common Ground for Texans. Judge Qualifications and Selection in the State of Texas.

Arguments For and Against Partisan Elections

Proponents of judicial elections argue that this method of selection is the most democratic, allowing the people to have a direct voice in selecting judges. They believe voters are capable of selecting a judiciary that reflects their values and that they are entitled to that choice.[42] Another argument put forth by proponents of this selection method is that affiliating judicial candidates with a political party efficiently communicates the candidate's values and ideologies to voters.

Critics counter that the growing amount of fundraising in election campaigns gives special interest groups a foothold to manipulate the judiciary to their liking. It is undisputed that judicial elections, and particularly partisan elections, have become much more expensive in the last decade.[43] Proponents of judicial reform contend that there are at least two ways in which campaign financing might be associated with judicial decisions in favor of campaign contributors' interests. The first way is a "selection bias" among the set of judges who win election. More specifically, judges who are already ideologically or otherwise predisposed to vote in favor of certain interests are likely to draw campaign financing from business groups and, by virtue of those resources, are more likely to be elected. Secondly, critics claim, judges who are not ideologically or otherwise predisposed to vote in favor of certain interests might, whether intentionally—or, as one former judge put it, subliminally—cast votes in cases either to obtain financial support from those interests for their future campaigns, or at least to reduce incentives for opposition or attacks funded by those interests. Those skeptical of the process, include Ohio Supreme Court Senior Associate Justice Paul Pfeifer, who claimed "I never felt so much like a hooker down by the bus station… as I did in a judicial race. Everyone interested in contributing has very specific interests. They mean to be buying a vote."[44]

Court Demographics

The stories of Chief Justice Collingsworth and Chief Justice Jefferson at the beginning of the chapter show how dramatically representation among justices has changed. Judges are the ones most likely to criticize the system of partisan election, however. Retired Chief Justice Wallace Jefferson participated in a study of judicial selection in 2021. He points out, "Judges can be elected even though no one knows who they are . . . so they vote based on the sound of your name."[45] To prove his point, Hispanic-sounding names did poorly in the largely White Republican judicial primaries and female names did well in the Democratic primaries.[46] While Texas's population is 41.2 percent non-Hispanic White, double that are White on the Texas judiciary (**Figure 9.9**). The numbers are better, however, for women (**Figure 9.10**).

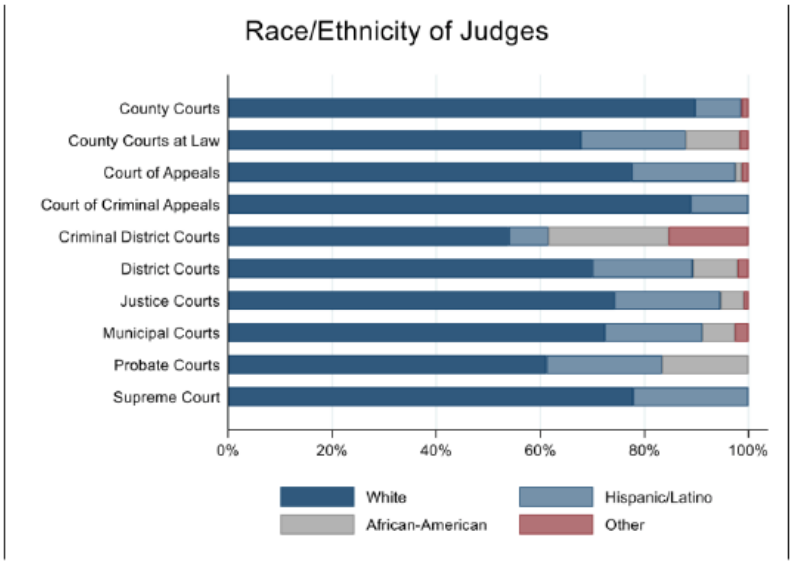


Figure 9.9, Racial Diversity on Texas Courts. SOURCE: Texas Commission on Judicial Selection Final Report, Public Policy Research Institute, Texas A & M University, December 2020, https://www.txcourts.gov/media/14502...compressed.pdf.

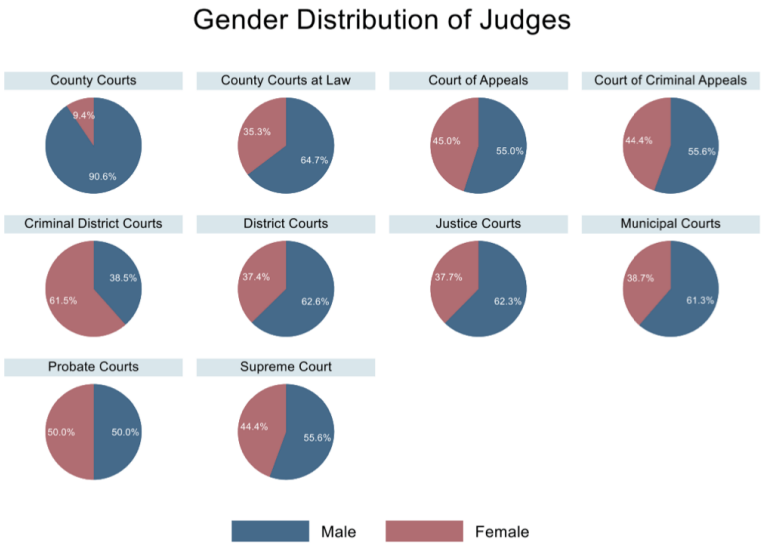


Figure 9.10 Gender Diversity on Texas Courts. SOURCE: Texas Commission on Judicial Selection Final Report, Public Policy Research Institute, Texas A & M University, December 2020.

In their final report on judicial selection Wallace noted the need for more diversity on the bench: "Recent tragic events that have triggering protests have captured a feeling of alienation feel plague our system of justice."[47]

Though there is a long way to go, if partisan election of judges continues alongside the higher voter turnout of recent elections, a more diverse slate of judges will come with the Democratic label. In 2018, eighteen new judges were elected in Harris County, the "Black Girl Magic" slate, as they called themselves, flipping the appellate courts from Republican to Democrat.[48] Seventeen of these judges are Black women. "The diversity of ideology of opinion on the courts will become greater, ant that will lead to more decisions that are more balanced, more fair and represent the people of Texas," said Democratic Justice Meagan Hassan.[49] James M. Douglas, Distinguished Professor of Law at Texas Southern University comments, "They are very accomplished lawyers, and I think the judiciary is going to be in good hands. . . . The most important thing is not that they are all Democrats, the most important thing is that they're all good."[50]

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9.5: Conclusion

Judicial selection has essentially been an issue in flux for the last 180 years. The Constitution of the Republic of Texas provided for a Supreme Court consisting of a chief justice and associate justices. The associate justices were the judges of the eight, newly-created district courts of Texas. The district judges, whose first session was January 13, 1840, served with the chief justice as associate justices from 1840–1845 (when Texas was admitted into the United States). In 1845, all judges were appointed by the governor with senate consent and served six-year terms. Under the Constitution of 1866 (the first Reconstruction Constitution), the Supreme Court was increased from three judges to five, each with a ten-year term of office. The chief justice was to be selected by the five justices on the court from their own number. All judges were elected by popular vote, but some ran on "tickets" and were all elected at the same time. Judicial term lengths were adjusted. Supreme Court justices served for ten years, and district and county court judges served for eight and four years, respectively.[51]

Under the Constitution of 1869, the number of justices was reduced from five to three, and most judicial positions were appointed. Supreme Court justices were appointed by the governor with Senate consent (as were district court judges) to nine-year terms. District judges served eight-year terms. County court judges were elected to four-year terms. Under the Constitution of 1876, the number of Supreme Court justices remained at three, and the positions were once again elected with a term of six years. A court of civil appeals was created, and its justices were elected to six-year terms. District court judges were elected to four-year terms, and the terms of county court judges were reduced to two years. Of lasting importance, after the Texas Court of Criminal Appeals was created in 1891, its justices were chosen in partisan elections to serve six-year terms.[52]

Responding to the perception that justice might be for sale in these increasingly expensive campaigns required by these partisan elections, the legislature passed the **Judicial Campaign Fairness Act (JCFA)** in 1995. The act applies to all judges in the state except for Justice of the Peace and municipal court judges. The JCFA limits the time frame during which a judicial candidate can accept a political contribution, sets contribution limits for judicial races, and establishes voluntary expenditure limits. The contribution limits apply to individuals and political action committees based upon whether the office sought is statewide or local. The act also places expenditure limits on candidates, also depending on the level of court for which the candidate is seeking election.

Attempts to further limit the ability of individuals or other interests to financially sway the outcomes of elections have been virtually non-existent since 1995. In a 2017 analysis of the prospect of exploring judicial selection reform, Ross Ramsey opined, "Even the Texas lawmakers who want to change the way the state selects judges are wary of taking that power away from voters. The politics are more difficult, in some ways, than the proposed policy changes."[53] Truer words could not be spoken.

There seems to be a marked difference in the way Texas voters and the state's judges view the judicial selection process. While partisan election of judges remains popular with voters, some judges believe it is unbefitting the profession to join political parties, solicit campaign funds from individuals (including lawyers) and business entities with matters before the courts, and to shamelessly pander to voters like other politicians. Voters, however, still favor directly electing judges and are very resistant to relinquishing that right to an alternative method. In addition, up until recently, political parties—especially the one in power—lacks the incentive to alter a system that favors and bolsters their party.

In the 2021 report on judicial selection, which was conducted by an state panel appointed by the legislature, judges on the panel were some of the most vocal against partisan elections. There appears to be some support from elected officials in the other two branches. But one needs to recall history to determine whether there will be any substantial progress in this area in the future. The last time the legislature created a commission to study the way Texas judges are selected was in 2013, and that body failed to meet a single time.[54] That fact alone should warn reformers that interest in this issue is lukewarm at best.

Key Terms and Concepts

Abstract of Judgment – a written summary which states how much money a losing defendant (the debtor) owes to the winning plaintiff (the creditor) in a lawsuit.

appellate jurisdiction – the power of an appellate court to review, amend and overrule decisions of a trial court.

arraignment – one of the first step in criminal proceeding where the defendant is brought in front of the court to hear the charges and enter a plea.

bail – the amount of money that secures the temporary release of a prisoner in exchange for security given for the prisoner's appearance at a later hearing.

***Batson* challenge** – an objection to the validity of a peremptory challenge, on grounds that the other party used it to exclude a potential juror based on race, ethnicity, or sex.

bifurcated trial – a judicial proceeding that is divided into two stages in which the different issues of guilty/non-guilt and punishment are addressed in separate parts of a criminal trial. **challenge for cause** -– A challenge that seeks to disqualify a potential juror for some stated reason. Typical reasons include bias, prejudice, or prior knowledge that would prevent impartial evaluation of the evidence presented in court.

civil law – the branch of law that deals with disputes, usually between private individuals over relationships, obligations, and responsibility

common law – the part of the law that is derived from custom and judicial precedent rather than statutes.

constitutional law – the body of law that evolves from a constitution which sets out the fundamental principles according to which a state is governed and defines the relationship between the various branches of government within the state.

contested election – an adversary proceeding between a candidate for a public office who has received the greatest number of votes and any other candidate for that office or, in certain cases, any registered voter of the appropriate political subdivision, for the purpose of determining the validity of an election.

courts of appeal – the 14 intermediate-level appellate courts that hear appeals from district and county courts to determine whether the decisions of these lower courts followed legal principles and court procedures.

criminal law – the branch of law that regulates the conduct of individuals, defines crimes, and specifies punishments for criminal acts.

deposition – a legal proceeding in which the sworn, out-of-court testimony of a party or witness in a legal proceeding is taken before trial and recorded by an authorized offer for later use in court.

discovery – Discovery, in the law of common law jurisdictions, is a pre-trial procedure in
a lawsuit in which each party, through the law of civil procedure, can obtain evidence from the other party or parties by means of discovery devices such as interrogatories, requests for production of documents, requests for admissions and depositions.

district courts – the major trial courts in Texas, which usually have general jurisdiction over a broad range of civil and criminal cases.

double jeopardy – a prosecution pursued twice at the same level of government for the same criminal action

due process – provisions of the Fifth and Fourteenth Amendments that limit government power to arbitrarily deny people “life, liberty, or property.”

error of fact – an error raised by a party to a lawsuit on appeal contending that the jury made a mistake when it resolved a factual dispute or controversy that was exclusively within the sphere of the decisions to be made by a jury. An error could include the assumption of wrong facts or an improper interpretation of those facts.

error of law – an erroneous determination by a judge of the legal rules governing procedure, evidence or the matters at issue between the parties.

exclusive jurisdiction – the power of a court to adjudicate a case to the exclusion of all other courts.

exculpatory evidence – evidence favorable to the defendant in a criminal trial that exonerates or tends to exonerate the defendant of guilt.

felony – a serious crime punishable by incarceration or by death.

grand jury – a jury that determines whether sufficient evidence is available to justify bringing a formal charge against an offender.

inculpatory evidence – any evidence favorable to the prosecution in a criminal case.

indictment – an official charge against an accused individual; also known as a "true bill."

information – a formal charging document that does not require a grand jury's vote and that describes the criminal charges against a person and the factual basis for those charges.

Judicial Campaign Fairness Act (JCFA) of 1995 – an act passed by the Texas legislature to regulate financing of judicial elections. The JCFA is located in Title 15 of the Texas Election Code.

justice courts – local, county-administered trial courts with limited jurisdiction over small claims and very minor criminal misdemeanors

misdemeanor – a minor crime, punishable by incarceration in the county jail and/or a fine.

municipal courts - local trial courts with limited jurisdiction over violations of city ordinances and very minor criminal misdemeanors

original jurisdiction – a court's power to hear and decide a case before any appellate review.

peremptory challenge – a party's or lawyer's objection to a proposed juror which is made without the necessity of providing a reason.

plea agreement – an agreement between the defendant and the prosecutor in which the defendant pleads guilty to the charge(s) in question or perhaps to less serious charges, in exchange for more lenient punishment than if convicted after a full trial.

statutory law – written law that is usually enacted by a legislative body.

statutory probate courts – courts having jurisdiction of wills and estates for deceased persons, guardians and heirships, and mental health commitments in Texas' largest counties

tort – a personal injury caused either by an act or an omission that amounts to a civil wrong for which courts impose liability.

trial *de novo* – a new trial by a different, higher court. A trial de novo in Texas is usually ordered by an appellate court when the original trial was held in a court that did not make or preserve a record of the proceedings

voir dire – the examination of a juror by a judge or an attorney.

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9.6: Critical Thinking Questions

Judicial Selection

Question 1: Determine which one of the selection methods NOT currently used by Texas would best serve the interests of the state's population and explain why you have selected that method of judicial selection.

Feedback: Answers will vary.

Judicial selection has been the subject of a long-standing debate both in Texas and in other states. The Texas Constitution provides for the election of most of the state's judges. However, the governor appoints district and appellate judges to vacant positions. County courts at law judges and justices of the peace are also elected, and vacant positions are filled through appointment by the county commissioners' court. Municipal judges may either be appointed or elected depending on the city charter or ordinance.

Proposals for constitutional amendments to change the system of selection have been made frequently. In 1974, the Constitutional Revision Commission offered two judicial selection proposals: one for a system based on the Missouri plan and the other for nonpartisan election of judges. Those proposals were rejected, and over the next four legislative sessions, at least fifteen unsuccessful proposals were offered favoring either the Missouri plan or nonpartisan election.

Methods of judicial selection vary substantially across the United States. Though each state has a unique set of guidelines governing how they fill their state and local judiciaries, there are five main methods: partisan elections; nonpartisan elections; legislative elections; gubernatorial appointment; and assisted appointment, also known as merit selection or the Missouri Plan.

Qualifications of Justices of the Peace

Question 2: Can we trust the judgment of a jurist who has never handled a jury trial of any kind or argued a motion in state or any other court? Should all judges in the State of Texas be licensed by the State Bar of Texas to practice law?

Feedback: Justices of the Peace once formed the political backbone of towns and villages, where state and federal officials rarely traveled, during the colonial era. Because America lacked an aristocracy (from which men were selected to fill these positions), offices were manned by respectable local leaders who were often non-lawyers. However, as American law became more complex and evolved and the number of law schools and internships related to law firms dramatically increased, there arose a greater demand that justices of the peace should be licensed attorneys.[1]

Fast forward to Texas in the twenty-first century. To serve on any of the appellate courts, including the Supreme Court of Texas, the Texas Court of Criminal Appeals, and the fourteen Courts of Appeals, a judge must be licensed to practice law in the state and be a practicing lawyer and/or judge for at least 10 years. To serve on the district courts, a judge must be licensed to practice law in the state and be a practicing lawyer and/or state judge for at least four years. All of Texas's 254 counties have a constitutional county court, and the county judges serve ex officio as the head of each county's commissioners court. Judges of these courts are not required to be licensed attorneys. Rather, they must be "well informed in the law of the state."

To serve on a county court at law, a judge must have practiced law or served as a judge for at least four years preceding the election. Qualifications for probate judges are identical to those of county court at law judges. But Justices of the Peace are not required to be licensed attorneys. However, they must complete a 40-hour course on relevant duties within one year of his or her election and a similar 20-hour course each year they continue to serve. And municipal court judges are either appointed or elected in accordance with the rules laid out by each municipality's charter or ordinances.[2]

Admittedly, most of the functions performed by justices of the peace in the state do not require a formal legal education. Yet, trials are a lot more complicated than they used to be. When JPs make decisions, those decisions can have lasting effects on the parties who come before them, and their errors can result in especially punishing consequences for criminal defendants.

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10: LOCAL GOVERNMENT

Learning Objectives

After reading this chapter, you should be able to:

- Explain the relationship between the city, county, and state governments.
- Describe the structure and function of municipal government in Texas.
- Describe the structure and function of county government in Texas.
- Describe the structure and function of special districts in Texas.
- Explain the roles and responsibilities of local political systems in Texas.

In this chapter, the reader will learn more about the types of local government that affect the citizens of Texas every single day. Local government includes counties, cities and special districts. Counties are created specifically by the state and every square inch of Texas is in one of the state's 254 counties. Their powers are given by the state. On the other hand, cities are created by the people. Special districts are created when needed, the most visible being school districts. In addition to 254 counties, Texas has just over 1200 cities and 3250 special districts with 1108 of those being school districts. Each covers a specific geographic area and perform certain government functions. Each is funded in different ways and most are controlled by elected officials that are responsible to the voters who put them in office.

The tricky part is understanding how these different types of local government work together (or against each other!) to meet the needs of Texas citizens. For example, the *Texas Observer* reported how a state agency worked with local government to solve a small problem. A small alligator with an apparent big appetite entered a Whataburger in the late night hours in Aransas Pass, a small town on the Gulf Coast. The employees and city police called in the Texas Parks and Wildlife Department, who sent game wardens to handle the creature. They were able to subdue the gator by taping its mouth shut. Later, the policy wrote on Facebook, "I guess it goes to show, Whataburger really is the choice of late night snacks for just about everyone, human and animal!"[1]

Sometime local governments come in conflict with each other. The beautiful hill country town of New Braunfels found its two school districts on opposite sides of a debate over the use of masks. After Governor Greg Abbott ended the mandated mask policy on March 10, the New Braunfels ISD surveyed parents of the mostly low-income, Hispanic students and voted to keep the mask mandate in place. The Comal ISD which represents the rural and mostly Anglo parts of the county voted to make the masks voluntary claiming personal responsibility and parental choice. Teachers do not know the preferences of the parents and say that students are facing peer pressure to quite wearing masks. The county is a Republican county with seventy percent of the people giving Donald Trump their vote in November. Local elected leaders say it is a fight between the moderate conservatives and those moving farther to the right.[2] This chapter will help to better understand the different levels of local government and how they interact with each other.



Figure 10.1 Houston Skyline and Buffalo Bayou HDR. SOURCE: Katie Haugland Bowen, licensed under CC BY 2.0.

10.1: The Relationship Between Local, State, and National Government

10.2: Municipal (City) Government

10.3: County Governments

10.4: Special Purpose Districts

10.5: Conclusion

10.6: Critical Thinking Questions

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1. Rose Cahalan and Christopher Collins, “A Weird End for a Weird Year: Our Eight Favorite Strange Texas Stories of 2020,” December 29, 2020 *Texas Observer,* December 29, 2020.

2. Bekah McNeel, “One Texas Town, Two School Districts and Completely Different Mask Policies. How Science and Politics are Clashing in New Braunfels,” March 25, 2021.

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10.1: The Relationship Between Local, State, and National Government

When the writers of the Texas Constitution met in 1875, local government was certainly important. *County* or *counties* were mentioned almost 200 times and *cities* were mentioned a little less than 100 times. Article 9 deals with counties and Article 11 deals with Municipal Corporations. However, it is interesting to note that Section 1 of Article 11 begins "The several counties of this State are hereby recognized as legal subdivisions of the State."3 Local government is the place where most Texans will experience interaction with any type of government. Decisions made by local government are the ones that most affect people of Texas on a daily basis—from driving on city streets to attending public schools. Interstate 35 (**Figure 10.2**), which runs north and south from the Red River in the north to Laredo in the south, is the most congested roadway in Texas. There will always be a construction project on this stretch of highway and it takes cooperation between the Texas Department of Transportation and city and county officials to handle the traffic congestion during construction.

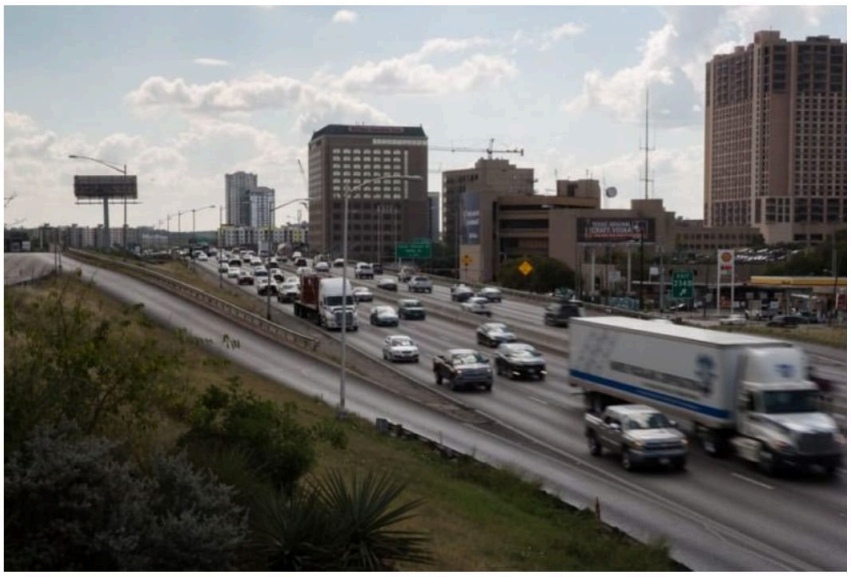


Figure 10.2 Construction on I-35 is constantly taking place.

Local government affects more people and gives ordinary citizens the opportunity to participate. Most people will never visit Congress or even the Texas legislature, but they very possibly will attend a city council meeting or a school board meeting. Local government offers the opportunity to make more contact with the elected representatives and most of the contact will be positive.

Finally, like other states, Texas adheres to Dillon's Rule—a legal principle that local governments have only those powers granted by their state government. John Forrest Dillon was an American jurist who authored *Treatise on the Law of Municipal Corporations* in 1872. The rule narrowly defines the power of city and local government to having only those powers that are expressly granted to them by the state, those that are implied from that grant of power, and those that are essential to the city's existence and function.

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3. Note 1, Texas Const. art. XI, § 1.

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10.2: Municipal (City) Government

City government was founded on the idea that local communities know best how to run their own affairs. Cities are incorporated communities, established by law as a city. Before 1836, there were no incorporated cities in Texas. After Texas became a republic in 1836, the Texas Congress began incorporating cities in Texas. The first city incorporated was Nacogdoches approved June 5, 1837. After statehood in 1845, city charters could only be granted by the Texas Legislature until the home-rule amendment in 1912. These charters set forth the type of government under which the city would operate, established the number of individuals to serve on the governing body, and authorized the city to perform those functions required when individuals live in close proximity to one another. City government was founded on the idea that local communities know best how to run their own affairs. Cities also provide those basic services—maintaining its streets, protecting its citizens with law enforcement, providing utility service, and passing ordinances to make the city a better place to live.

General-Law and Home-Rule

Cities can be classified as either **a general-law** or **home-rule** city. After statehood in 1845, city charters could only be granted by the Texas legislature, but in the early twentieth century, population growth outpaced the state legislature's ability to regulate local concerns and the Texas Constitution was amended in 1912 to allow for home-rule.[4] Once an area has a population of 201 or more, it can become a general-law city with a charter prescribed by the legislature. Once a city has more than 5,000 people, it can choose to become a home-rule city with a locally drafted charter that defines how it will govern itself. If the population of a city changes, it does not automatically have its status changed, the local voters must decide the legal status of its status. The key advantage of home-rule status is the flexibility in writing a charter to establish powers of the elected officials, setting salaries, and determining the process for passing, repealing or amending ordinances. They have the ability to manage its own affairs according to local interests. Currently, there are about 870 general-law cities and 350 home-rule cities.

More and more, ordinances from home-rule cities are unpopular with state government resulting in state laws preempting, or nullifying, local ordinances deemed in conflict with state law. **Preemption** was originally designed to provide a uniform baseline of state-wide regulations, but it has more recently become a tool used for policy change.[5] Most cases in the twenty-first century related to upholding local regulations that impeded drilling and fracking in particular cities, but a 2014 bill overruled oil and gas regulation by local government. During the 2017 legislative special session, there were a number of preemption bills. Two popular ones passed—one limiting local regulations of tree removal and the second one restricted the annexation powers of local government. Others have been less popular, such as those rolling back local LGBTQ protections, including the failed "bathroom bill" that would have preempted local ordinances allowing transgender people to use the bathroom of their choice or those that allowed social workers to reject LGBTQ clients. That year, Governor Abbott also used preemption to impose fines on so-called sanctuary cities for not cooperating with immigration roundups.[6] In 2021, Austin Mayor Steve Adler has come into conflict with the state over requiring masks after Governor Abbott lifted COVID restrictions. Mayor Adler has so far stood firm, saying "We promise to be guided by . . . science" and district courts have upheld the local health policy.[7] Governor Abbott is also attempting to restrict voting through preemption by curtailing mail in voting and disallowing the extended hours of early and drive-thru voting enacted by local officials during the COVID pandemic.[8]

In addition, home-rule cities have three other powers not available to general-law cities or state government: recall, initiative, and referendum. Recall is a process for removing elected officials through a popular vote before their term is up. To initiate this procedure, citizens would file an affidavit with the alleged grounds for removing the elected official with the city secretary/clerk. Then a petition would be provided to collect signatures for the removal. An initiative allows residents to propose legislation themselves if the city government has not taken action. Citizens must draft the text for the proposed ordinance and gather signatures on the petition. The number of signatures varies from city to city but could be a certain number of voters or the proportion of votes in a prior election. If the petition is valid, the city government can adopt the ordinance or hold an election on the proposed ordinance. A referendum is a process by which issues are referred to the voters to accept or reject. Voters may also petition for a vote to repeal an existing ordinance. This process occurs in home-rule cities. On the state level, voters must approve state constitutional amendments.

Forms of City Government

There are two major forms of city government in Texas—the Mayor-Council and Council- Manager (**Table 10.1**). A third from of

city government was the commission form, devised in Galveston in 1901 after the Galveston hurricane of 1900. Millions of dollars of property was swept away and there was an estimated loss of 6,000 lives. A commission was originally appointed, later elected, and each would handle some aspect of rebuilding the city. After World War I, very few cities used this form of government and by 1993, no cities used the commission form.[9]



Table 10.1 Two Forms of Local Government

The **Mayor-Council** can be furthered broken down into strong-mayor and weak-mayor, but there are very few weak-mayor forms. With a strong Mayor-Council, the mayor is the city's chief administrator responsible for ensuring all laws and ordinances are enforced. The mayor can appoint department heads and those individuals serving on advisory boards. He will set the agendas for the council meetings and prepares the budget. With a weak Mayor-Council, his autonomy is much more limited. The council has a voice in staffing, setting the agenda, and budgeting. Houston is the only large city in Texas with a Mayor-Council form of government.

With a **Council-Manager** form of government, a professional city manager is hired to run the city on a day to day basis. The mayor is largely ceremonial and has no more authority than the other council members. The council will make the laws and policy decisions, and the city manager is responsible for making sure the laws and policies are carried out. All of the city departments report to the city manager. Most of the more populous cities (Austin, Dallas, San Antonio, El Paso, Fort Worth, Arlington, Corpus Christi, Plano and Laredo) have the Council- Manager form of government.

The major city officials for both forms of city governments include the mayor, city council, city attorney and the chief of police. The mayor serves as the presiding officer of the city council and may call meetings and set agendas depending on the city structure. The mayor will be responsible for emergency management both natural and man-made disasters, including hurricanes, tornados, wildfires, and the power outages caused by serve weather), appointing certain positions, leading the policy process and performing some ceremonial duties.

The city council will make laws and have broad policy-making authority such as approving the budget for the city. Depending on the form of government, either the major or the city manager will be responsible for carrying out those policies. They also determine salaries and benefits for city employees and sign/authorize contracts. The city attorney prosecutes city code violations and provides legal advice to the council or other city officials. Code violations could include where vehicles and trailers can be parked or putting up signs without a permit. They will also assist in the writing or proposed ordinances and defend the city in any possible lawsuits. One such case was filed by the city of El Paso against the owner of an establishment that featured live nude entertainment that was less than 1,000 feet from a public school, in violation of a city ordinance (law). The police chief is responsible for enforcing criminal state and traffic laws and all city ordinances. They oversee the police department including the budget, operations, conduct of police officers and the city jail. Finally, depending on the form of government adopted by the city, the city manager supervises city departments and can remove department heads. They will implement policy decisions made by the mayor and/or council, manage the budget, appoint city employees and oversee the enforcement of non-criminal city ordinances.

Elections

The mayor is usually selected in an **at-large election** where officials are selected by voters of the entire geographical area, rather than from smaller districts within the larger area. Council members can be selected at-large or from single-member districts where voters elect one member from a district. More and more cities are using a combination of both at-large and single- member elections for the council members.

Single-member districts can favor minority populations as many cities are still geographically segregated. At-large elections favor the majority ethnic group as people tend to vote for candidates of their own race or ethnicity. Some local governments use cumulative voting where voters can cast a number of votes equal to the positions available and may cast

them for one or more candidates in any combination. Before Amarillo changed its voting system, elections for the school board were elected at-large. The result was that the Anglo majority had all of the seats on the school board. After it changed to cumulative voting in 2000, the first black candidate won and a Hispanic candidate won, the first in over thirty years.[10] Home-rule cities also have the ability to limit the number of terms that the mayor and council members may serve.

As the metropolitan areas get more populated, more problems will get identified and will require attention from local government. More people mean more traffic, more trash, more crime, more water supply, more parks/green space, more crime, more jails, more police protection, more fire protection and more pollution to name just a few. Texas cities use both local property and the sales tax to fund their police and fire departments, parks, utilities and other public services. Being known as a low tax state, this presents challenges to cities and other forms of local government.

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4. Terrell Blodgett, “Home Rule Charters,” Texas State Historical Society *Handbook of Texas*, https://www.tshaonline.org/handbook/...-rule-charters.

5. “Part One: State Preemption Unleashed” New America, https://www.newamerica.org/political...ion-unleashed/.

6. Audrey McGlinchy, “ Texas Gov. Greg Abbott Signs Controversial 'Sanctuary Cities' Law,” NPR All Things Considered, May 8, 2017, https://www.npr.org/2017/05/08/52745...ary-cities-law.

7. Andrew Buncombe, “Austin Mayor Blasts Gregg Abbott for ‘Breaking Promise’ on Mask Mandate,” Independent, March 3, 2021, https://www.independent.co.uk/news/w...-b1812111.html.

8. Alexa Ura, “Gov. Greg Abbott formally opens Texas GOP bid to clamp down on local efforts expanding voting access,” *Texas Tribune,* Mar. 15, 2021, https://www.texastribune.org/2021/03...g-greg-abbott/.

9. Bradley R. Rice, “Commission Form of City Government,” Texas State Historical Association Handbook of Texas, June 1995, https://www.tshaonline.org/handbook/...ity-government.

10. “The History of Cumulative Voting in Amarillo,” Program for Representative Government, December 2009, http://archive.fairvote.org/?page=247.

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10.3: County Governments

Texas has a total of 254 counties, the largest of any other state. Populations in the counties vary considerably, from 169 in West Texas's Loving County to over 4.7 million in Harris County, home of Houston. While few live in Loving County, it covers an area of roughly 668 square miles,[11] about half the size of Rhode Island. Elections in the county usually have a hundred percent voter turnout, particularly since about thirty seven percent are employed by the county. Loving County oil has supported one of the highest per capita incomes of any county in the state.[12]

The Constitution of 1876 contains much detail about the organization of county government. Not only did it include the old county board which was the precursor to the current system of a county judge and four county commissioners , but provisions were made for a number of other elected officials. It was also specific about the establishment of new counties. At that time there were only 129 organized counties. No new county could be smaller than 900 square miles and should be as square as possible. Additionally, there should not be less than 700 square miles, although there are some exceptions. Rockwall County was created from Kaufman County in 1873 because it was difficult to get to the county seat in Kaufman county. It has only 149 square miles and is the smallest county. Compare that to Brewster County in the Big Bend region with 5,935 square miles. Since Loving County was organized in 1931, Texas has remained at 254 total counties.

The provision for home-rule was abolished in 1969, and since then, the basic organization of all 254 counties is much the same. County government is the arm of state government and provides many state services at the local level.

County Structure

The major duties of county government include collecting property taxes, providing emergency management services to citizens outside the city limits, building and maintaining roads and bridges, issuing vehicle registration, registering voters, maintaining records, providing public safety and justice, and holding elections. They may also provide for parks, community centers, libraries and senior centers. Counties also operate and fund almost the entire court system in Texas. None of the county's elected officials is controlled by another elected official, they answer directly to the voters.

Elected Officials

The county judge is the presiding officer of the commissioners court and depending on the size of the county, has a wide range of judicial and administrative duties. In counties with less than 225,000 residents, the judge will serve as the budget officer. The judge will serve as the head of emergency management. In the less populous counties, the judge can preside over misdemeanor criminal and small civil cases, probate matters and appeals from the justice of the peace court.

The **county commissioner** is one of four in each county and represents one-quarter of the county's population. The **county commissioners court** consists of the county judge and four commissioners. They adopt the budget and tax rate for the county and approved purchases for the county. They fill vacancies for any elective or appointed office in the county and determines salaries and benefits. They are responsible for the roads and bridges in the county and must maintain all county buildings and facilities.

The county attorney represents the state in prosecuting misdemeanor criminal cases and works with law enforcement into the investigation of criminal cases. The county attorney will provide legal advice to the county officials and the commissioners court. If there is no district attorney, the county attorney will represent the state in district courts.

The **district attorney** represents the state in prosecuting felony criminal cases and works with law enforcement into the investigation of criminal cases. The district attorney will present cases to the grand jury and will represent victims of violence with protective orders and will be responsible for removing children from abusive homes.

The **county clerk** serves as the clerk of records for the commissioners court, constitutional county court and statutory county courts. The county clerk is responsible for keeping and securing all public records including bonds, deeds, and birth and death certificates.

The clerk issues marriage licenses and can serve as the elections officer for countywide special and general elections.

The district clerk is the registrar, recorder and custodian of all court proceedings in any legal cause of action. The district clerk coordinates the jury panel selection process, collects filing fees and handles funds held in lawsuits or money awarded to minors.

The county treasurer is the custodian of county finance and county funds. The county treasurer receives and deposits all county revenues and will disburse funds upon order of the commissioners court. They will reconcile the bank statements and approve the payroll. They may be the county's investment officer, human resources officer and assist with the audit in those counties without an auditor.

The sheriff is a licensed peace officer and is responsible for the enforcements of the criminal laws of the state. They manage and operate the county jail and prisoners, provide security for the courts, serve warrants and civil papers, and enforce traffic laws on county roads. In counties with less than 10,000 residents, the sheriff may also serve as the county tax assessor/collector.

The **county tax assessor- collector** calculates the property taxes and then collects those taxes. They also process motor vehicle title transfers and issues motor vehicle registration and licenses. They can register voters and conduct elections. They can also collect various other fees for the state and county.

The justices of the peace presides over the justice court for misdemeanors, small civil disputes and disputes between landlords and tenants. They may also hear truancy cases, conduct inquests and perform marriage ceremonies.

The constable is a licensed peace officer that performs law enforcement functions, including issuing traffic citations. The constable serves warrants, subpoenas and temporary restraining orders. They also serve as bailiff for justice of the peace courts.

The county auditor is appointed by the district judge(s). They prepare the accounting records for all county funds and they audit the records and accounts of all of the county departments. They are responsible for verifying the validity and legality of all county expenditures. They also serve as the budget officer in counties with more than 225,000 residents.

County Finance

Aside from property taxes (yes, counties can also tax your property and so can some special districts!) which provide the revenue for the day to day operations of the county, counties will need larger revenue sources for discretionary or non-discretionary items. This is usually done with the issuance of bonds or certificates of obligation. Generally, if the item is large and discretionary such as the building of a new arena or exhibit hall, a bond election will be used. The voters can then determine if such a project is warranted. Because the county cannot go to a bank and borrow money and take out a loan, financing of large projects is done through the issuance of bonds. A **bond** is an agreement between the county and the bondholder where the county receives the money and agrees to pay the money back with interest.

The two major types of bonds are General Obligation Bonds and Revenue Bonds. General Obligation Bonds are authorized to pay for major capital projects and the debt is paid by property taxes. Revenue Bonds repay the money based on revenue generated by the proposed project and are used more by cities than counties as counties usually have a type of facility that could generate the needed revenue. Exceptions would be in the larger, more populous counties.

Certificates of Obligation are bonds that do not require approval from the voters and are generally used to pay for the construction of a public work.

Eagle Stadium in Allen (**Figure 10.3**), a suburb of Dallas built a sixty million dollar football stadium financed by a bond, but had to close down for repairs eighteen months after it opened. It boasted seating for 18,000 people and a thirty-eight foot video board, but cracks in the concrete of the concourse led to its closing.



Figure 10.3 Eagle Stadium in Allen, Texas.

Problems and Reforms

In general, counties have less power than home-rule municipalities. They cannot pass ordinances and they do not have zoning powers except in limited instances. Zoning regulations are used for community planning and allow cities to restrict the use of private property. For instance, will the land be used for business, industrial, residential or other purposes. Texas also does not allow for consolidated city-county governments. They can enter into interlocal agreements. For instance, the county could bill and collect property taxes for the school district or the city so residents would only receive one bill. In many instances, it would be more efficient to consolidate some services. Consider the cities of Midland and Odessa. They are two cities twenty miles apart in two different counties, each with their own city and county jails. It could be feasible to build a "mega-jail" in between the two cities and they share the cost and responsibility for the maintenance and staffing.

Unlike municipal elections, county elections are partisan where the candidates appear on the ballot with their party affiliation. Like any partisan election, there will be some amount of patronage, where employees get their positions in proportion to their party loyalty. Many times, elected leaders want to bring some of their loyal supporters into the organization. Many counties have not centralized their purchasing into a single department which would ensure discounts and allow for the awarding of contracts after careful consideration of the bids. And finally, each commissioner is individually responsible for the road construction and maintenance in their particular geographical district. This lack of coordination between the entire commission is not efficient or effective, and many times leads to competition between the commissioners.

County records are open to the public and meetings of the county commissioners court are also open to the public, meaning there is a lot of transparency. We expect our county officials to respond to the needs of the people within the county.

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11. United States Census, "Loving County," https://www.census.gov/quickfacts/lovingcountytexas.

12. Craig Hlavaty, "Weird Texas: The story of the least populated county in Texas and the United States," Chron., June 10, 2017, texas/texas/article/Texas-Loving-County-least-populated-in-America-11202366.php.

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10.4: Special Purpose Districts

The most numerous Texas governmental organizations are special purpose districts. **Special purpose districts** are independent governmental units that exist as separate entities with administrative and fiscal independence from other local government units. In a publication by the Texas Senate Research Center, they are referred to as **invisible governments** because people know so little about their function or structure. Many citizens may not be aware of these special districts until they buy a home and find out that there are special districts that have the ability to tax their property, like school districts or community college districts. Most find their legality in Articles 3, 9, and 16 of the Texas Constitution. Originally, they were created to provide infrastructure or to levy taxes in limited circumstances like firefighting or road construction or water and sewage treatment. Today, these districts can have broad powers, including:

- imposing a property tax;
- imposing a sales tax;
- issuing bonds and borrowing money;
- contracting with other entities;
- suing and being sued;
- acquiring, purchasing, selling, or leasing personal property.

Of course, with these "invisible governments", problems can arise. First, more layers of government can result in inefficiency, redundancy, and waste. Second, the potential for rising property taxes. There is also a question of accountability in how much value is added to the community. Finally, there is concern about transparency and the public actually understanding how their tax dollars are being spent.[13]

Some counties also have the power of **eminent domain,** the right of government to take private property for public use, with payment of compensation. The plan to build a high speed railroad that could deliver passengers between Dallas and Houston known as the Texas Bullet

Train sounds like a great idea, but the people who own the land along the proposed plan have other ideas.

The reasons for creating special districts usually arise when it is difficult for local government to provide some of the services needed. For instance, flood control crosses city and/or county lines. It may be difficult for cities or counties to finance these projects. Many times political leaders may want to turn over the responsibility to another entity so it is no longer its problem. They offer flexibility and usually do not conflict with the existing local government. Special districts are mostly apolitical, so it has helps to reduce conflict. Developers will create special districts to help fund roads, water or sewer lines. And, economic development districts have the ability to collect taxes to use for its projects.

Funding for special districts can come from a variety of taxes including property taxes, sales taxes, or hotel/motel occupancy taxes. They can also raise revenue through fees such as water and sewer usage fees, garbage pickup fee, tuition payments or toll road fees. Additionally, special districts can issue bonds to fund projects.

The most visible and understood special purpose districts are the independent school districts. But there are special districts for community colleges, water and waste management, economic and community development, health and safety, agricultural development, transportation, and conservation. As of July 2014, there are approximately 3,350 special districts and almost 2,000 of those report to the Office of the Comptroller of Public Accounts.[14]

Education

Education is the most recognized form of a special purpose district.

Independent School Districts Texas has 1,108 independent school districts, including charter, university, and military schools. Charter schools are not subject to the same state laws than regular independent school districts, but they are monitored under the statewide testing, and accountability system. Community Colleges and Universities may apply to house a high school program on its campuses where students take both high school and college level courses. The military school districts are for children of military members and civilian employees residing in or employed on a military base. **School districts** can be created by a petition signed by ten percent of registered voters which is presented to the county judge. The county judge will then order an

election for approval by the voters. Another way a school district can be created is by detaching territory from an existing school district and attaching it to a school district that is contiguous to the detached territory. This requires multiple steps and approval by both boards of trustees and the voters in each territory. Two or more school districts may be consolidated if approved by the boards of trustees and the voters of both districts.

Independent school districts are governed by a board of three, five, or seven trustees who can serve three or four year terms. They can be elected from single-member districts or from the district at-large and the elections are non-partisan. The board of trustees have the power to govern and oversee the management of the school district, adopt an annual budget, and set the tax rate each fiscal year. School districts rely on property taxes as the local funding source, but since property values vary across the state, this amount of money also varies across school districts. The state supplements this variation by providing aid to the school districts.

Charter schools were created to improve student learning, increase choice, provide opportunities to attract new teachers, and encourage innovative learning methods. They are funded primarily by the state, but also receive federal funding in addition to grants and local donations. There are four types of charters.

- Home-rule school district charters are adopted by the independent school district wanting to change all of its schools into charter schools.
- Campus program charter schools were once a school in a district that wanted to transition to a charter school.
- Open-enrollment charter schools are nonprofit organizations authorized by the State Board of Education. Most charter schools fall into this group.
- College or university charter schools are developed by higher education institutions.

Community Colleges Public community colleges are two-year institutions that serve local taxing districts and service areas that offer vocational, technical and academics courses that lead to certification or an associate degree. They play an important role in helping to develop the workforce and to prepare students to move to the university level to complete their academic studies. Community colleges in Texas have open-admission policies and they offer continuing and remedial education along with counseling and guidance programs. The first community college district was Blinn College established in 1883. Today, there are fifty community college districts. The following **Table 10.1** shows the list of community colleges by geographic region and highlights the larger community college districts.

Texas Comptroller Region	Community College District	Enrollment
Alamo Region	Alamo Community College	60,818
	Victoria College	3,827
Capital Region	Austin Community College	38,362
Central Texas Region	Blinn College	19,113
	Central Texas College	9,976
	Hill College	4,421
	McLennan Community College	8,954
	Temple College	4,910
Gulf Coast Region	Alvin Community College	5,645
	Brazosport College	4,304
	College of the Mainland Community College	4,673
	Galveston College	2,423
	Houston Community College	48,309
	Lee College	7,773
	Lone Star College System	78,244
	San Jacinto Community College	37,895
	Wharton County Junior College	6,768

High Plains Region	Amarillo College	9,844
	Clarendon College	1,633
	Frank Phillips College	1,452
	South Plains College	9,279
Metroplex Region	Collin County Community College	32,846
	Dallas County Community College	80,627
	Grayson College	4,284
	Navarro College	8,463
	North Central Texas College	10,171
	Tarrant County College	56,941
	Trinity Valley Community College	6,562
	Weatherford College	6,284
Northwest Region	Cisco College	3,358
	North Central Texas College	10,171
	Ranger College	2,399
	Vernon College	3,055
	Western Texas College	2,179
Southeast Region	Angelina College	4,819
South Texas Region	Coastal Bend College	4,633
	Del Mar College	11,867
	Laredo Community College	10,145
	South Texas College	31,640
	Southwest Texas Junior College	6,894
	Texas Southmost College	7,130
Upper East Region	Kilgore College	5,294
	Northeast Texas Community College	3,090
	Panola College	2,771
	Paris Junior College	4,959
	Texarkana College	4,234
	Trinity Valley Community College	6,562
	Tyler Junior College	10,019
Upper Rio Grande Region	El Paso Community College	28,241
West Texas Region	Howard County Junior College	4,510
	Midland College	5,259
	Odessa College	6,571

Table 10.1 Texas Community College Districts by Comptroller Region Fall 2018 SOURCE: Texas Comptroller of Public Accounts and Texas Higher Education Coordinating Board. List of the community colleges in Texas by region.

Austin Community College has recently partnered with Apple to launch a new app development program (**Figure 10.4**).



Figure 10.4 Austin Community College President/CEO Dr. Richard Rhodes at the Capitol Factory in August 2017 to announce ACC-Apple partnership. She was joined for the announcement by Tim Cook, CEO of Apple, and Austin Mayor Steve Adler. SOURCE: "ACC & Apple Partnership" by Austin Community College is licensed under CC BY 2.0.

If citizens are interested in establishing a community college district, they must appoint a steering committee to provide leadership. The steering committee will circulate a petition that must be signed by at least ten percent of the registered voters in the proposed district. This petition is sent to the Higher Education Coordinating Board and if approved, then an election will be held for majority approval. These colleges receive funding from the state based on a funding formula. The community college non-partisan, elected board of trustees also raise local money through property taxes and through tuition and fees.

Economic and Community Development

The Texas Constitution was amended in 1987 to recognize the importance of economic development when it serves a public purpose. Special purpose districts can be created to support Arts and Entertainment Districts, Sports Facility Districts, Water Control and Preservation Districts, or Library Districts.

Public Improvement Districts can assist developers in infrastructure improvements such as streets, water and sewer lines, landscaping, sidewalks, or parking facilities. Procedures vary with the different districts, but typically most are governed by an appointed board. The voters have the option of using the local sales tax to help finance the community's economic development projects.

Water and Waste Management For years, lawmakers have been concerned with making sure that Texas water supplies are dependable and adequate. The Texas Water Development Board, the Texas Commission on Environmental Quality and the Texas Parks and Wildlife Department plan and manage the water resources of Texas. Special purpose districts can be created to provide for water districts, solid waste services, municipal and county water services, stormwater management, water rates and services, water quality control and regional waste disposal.

A **Municipal Utility District (MUD**) is created primarily to provide water and sewer services to new developments which may be outside of a nearby municipality. A MUD can be created by the legislature or by the Texas Commission on Environment Quality with geographical boundaries. The residents of the district vote to authorize the sale of bonds to develop water and sewer services to that area. Bonds are repaid with the fees charged for those services by the residents. Planned Improvement Districts (PID)is a financing tool that can be used for the same purposes as a MUD, but can also be used for sidewalks, landscaping, parks and other development possibilities.
Health and Safety Districts There are special purpose districts related to health and safety issues for specific geographic areas. Those with health care functions include hospital districts, health services districts, mosquito control districts, and emergency services districts. Those for safety include crime control and prevention districts and jail districts.

The legislature has been authorized to provide for the creation, establishment, maintenance and operation of hospital districts. Those districts are responsible for the medial and hospital care for the needy citizens of the district. After a petition process and

voter approval, hospital districts can issue general obligation bonds and revenue bonds. The governing boards can be appointed or elected in non-partisan elections. A health services district can be created between one or more counties and one or more hospital districts to provide health care to indigent citizens on a sliding scale basis. They are authorized to issue revenue bonds and the governing board is usually appointed. Mosquito control districts are created to eradicate mosquitos in the district. After a petition and election process, mosquito control districts can levy a property tax not to exceed twenty-five cents on each $100 of taxable value on the property. In 2003, a constitutional amendment was passed that converted rural fire prevention districts into emergency services districts with the ability to raise the tax from three cents to ten cents per $100 valuation of property.

Jail districts can issue bonds and can levy an ad valorem tax. They are created by one or more counties to construct, acquire or improve a jail facility to serve the district after a petition and election process. Temporary directors are appointed initially and successors will be elected for 2 year terms. If a majority of the voters approve, a crime control and prevention district can be created to provide programs such as crime stoppers telephone lines, radio dispatch, drug and chemical disposal center, block watch programs, senior citizen safety programs, and specific drug and alcohol awareness and family violence programs. The governing body is appointed and the district is financed by a sales and use tax.

Agricultural Development In 2001, the legislature authorized the creation of agricultural development district to promote the development of agricultural facilities. They can impose certain charges and any type of bond. The district will be composed of land that is not located within an incorporated city unless the city agrees. In addition, special districts in this area also include noxious weed control districts and wind erosion districts.

Transportation Counties may work with the Texas Department of Transportation and the Texas Transportation Commission to create road districts to levy taxes and issue bonds for the construction and maintenance of the roads within the district. Additionally, navigation districts have been created to provide for the construction and improvement of waterways in Texas for the purpose of navigation. They are tasked with improving rivers, bays, creeks, streams and canals to prevent overflow, to provide irrigation and to permit navigation. They can also be charged with conserving and developing natural resources, including the improvement, preservation and conservation of inland and coastal water for navigation. The costs for both are funded by bonds or taxes, and the governing boards are appointed.

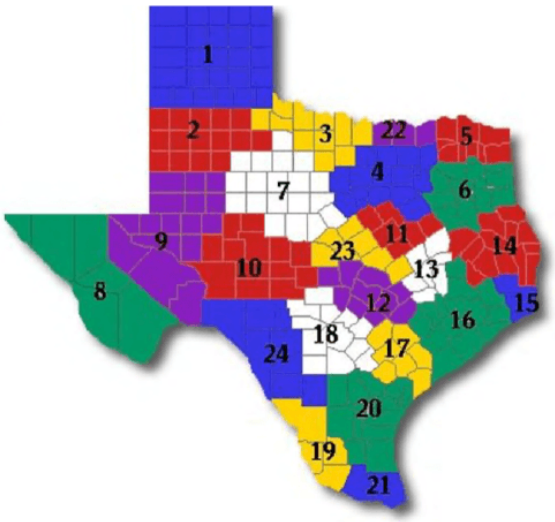
Evaluating Special Purpose Districts As mentioned earlier in the chapter, special districts operate with little supervision or public participation. There is very little comprehensive review of these districts. They can become large and difficult to oversee and they may duplicate services already provided by cities or counties. The property taxes imposed by special districts have increased almost 300 percent since 1992. Because many of them are small, they are uneconomical. And, because people in the district are unaware of their existence, they are undemocratic.

Recommendations for special districts include comprehensive reviews, local elections to approve tax rate increases, and transparency in budgets and financial statements. When dealing with the tough issues such as flood control, the other local governments should be involved. And before more special districts are created, there should be a review to ensure that there will be no duplication of the existing entities. Finally, special districts, like state agencies, should also be subject to a sunset provision to authorize its continuance. All state agencies are subject to an expiration date and will be abolished on that “sunset” date, unless the legislature passes a bill to continue, usually for a period of twelve years.

Councils of Government (COGs)

Texas has twenty-four **councils of government (COGs)** serving its 254 counties regionally. They were organized in the late 1960s and early 1970s. They deal with problem and planning needs that cross the boundaries of local governments. The Texas Association of Regional Councils (TARC) was established in 1973 to allow for the exchange of information and ideas (**Map 10.1**). They help to educate the public about the services provided by the COGs. Finally, they represent the COGs when state or federal agencies are involved. TARC identifies the following list of services provided by the councils of governments:

- planning and implementing regional homeland security strategies;
- operating law enforcement training academies;
- promoting regional municipal solid waste and environmental quality planning;
- providing cooperative purchasing options for governments;
- managing region-wide services to the elderly;
- maintaining and improving regional 9-1-1 systems;
- promoting regional economic development;
- operating specialized transit systems; and
- providing management services for member governments.



Map 10.1 Twenty-four TARC regions. SOURCE: Unknown Author, licensed under CC BY-SA.

These are organizations, not governments, so they have no authority to make laws, levy taxes, or exercise police powers. They assist in the development of the regions and try to eliminate duplication while promoting regional economies and efficiency. They review and comment on all federal and state grants to prevent communities from competing for resources. Policy decisions are made by its board of directors, two-thirds of which must be members of the participating counties or cities. The funding for the COGs come primarily from the federal government, but they can also receive funding from state or local sources through direct or indirect grants.

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13. "Special Purpose Districts," Texas Public Policy Foundation, Local Government Legislator's Guide to the Issues 2017-18, https://files.texaspolicy.com/upload...ricts-copy.pdf.

14. "Research Spotlight: Invisible Government: Special Purpose Districts in Texas," Texas Senate Research Center, October 2014, https://www.senate.texas.gov/_assets..._Districts.pdf.

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10.5: Conclusion

As part of the federal system, all units of local government can be affected by decisions made by the federal government, the State of Texas, and other units of local government. However, this is the place where most citizens will have their most direct contact with government. Decisions made at the local level are most likely to affect their day-to-day lives.

Cities in Texas are classified as either general-law or home-rule cities. Very small cities receive their charters defining their structure from the state legislature. The larger cities have much more flexibility to determine their structure, organization and electoral systems under home-rule. The two primary forms of organization are the mayor-council and the council- manager. For the most part, elections are non-partisan with no ties to a political party and elected leaders are chosen from at-large or single-member districts. Cities derive most of their revenue from the sales tax and property taxes.

Counties are the administrative arms of the state, responsible for enforcing state laws and conducting elections. Their powers are restricted by the Texas Constitution. Unlike municipalities, the elections are partisan and the primary policymakers are the county judge and the four county commissioners.

Although many citizens are not aware of special districts, they are separate legal entities that include public schools, community colleges, and many non-educational districts that provide services such as mass transportation or economic development. Councils of government were created to increase cooperation and coordination between the different levels of local government.

There are a myriad of problems facing local government. Recent events in Texas have highlighted these problems. The COVID-19 pandemic stretched local resources to the limit as cities and counties and health special districts had to deal with the healthcare crisis and then to administer the vaccine in a very large state with a very large population. Not only was it a healthcare crisis, but also an economic crisis and an educational crisis. Texas is still assessing the long-term effects on businesses and student performance. Most of the burden fell on local government to deal with the pandemic and the consequences. Just as many were excited about the first wave of vaccines, Texas was hit with a week-long deep freeze in February of 2021 and the failure of the power grid to provide enough power to adequately keep many people with power and water supplies. Again, it will primarily be local government with resources from state and federal government that will be working closely with their residents as they get their lives back on track. Once again, this highlights the need for cooperation between all units of government in Texas.

Finally, local government is the first point of contact for many citizens, and it offers a number of opportunities for involvement and understanding the importance of civic engagement and being an active part of your community. Residents should take the opportunity to attend public meetings of their city council, city commission or public school board. They should also look into volunteer opportunities to serve on various committees such as parks and recreation and assist in the long-term planning of those resources. Many neighborhoods have their own organizations and work hard to keep their neighborhoods clean and secure—another opportunity to volunteer. One may even want to run for a local elected office!

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10.6: Critical Thinking Questions

1. Why is the council-manager structure the most popular way to organize cities? What are the advantages?

There are a couple of advantages to the council-manager form of organizing cities. The council-manager structure takes some of the “politics” out of governing. The city manager is responsible for the day-to-day decision-making, not the elected leaders. The elected leaders rely on the city manager to bring recommendations to them for approval. Another advantage is that city managers are true professionals hired based on their knowledge and expertise rather than being an elected “favorite” with perhaps no experience in city management.

2. Should counties be given the option of home-rule? Explain your answer.

Many people would argue that “if it’s not broken, don’t fix it.” County government has been around since the constitution of 1876 was written and it functions reasonably well. However, it is not workable for all counties to be organized exactly the same. There are big differences from county to county and home-rule would allow counties to organize and govern based on the needs of the individual counties. It is unreasonable to expect Harris County in the Houston area should organize similar to Brewster County in the sparsely populated Big Bend area.

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11: PUBLIC POLICY IN TEXAS

Learning Objectives

After reading this chapter, you should be able to:

- Explain what policies are provided by government and why.
- Describe the various stages and actors in the policy process.
- Analyze the different roles played by the three levels of government, including areas where their powers overlap and areas where there is conflict.
- Assess the specific policies Texas engages in, and how those are tied into the various agencies the legislature has created over time.
- Explain how a market is supposed to work, and articulate why a government might choose to become involved in market transactions.

On Valentine's Day weekend 2021 a massive storm blew through the entire state of Texas (**Figure 11.1**). According to the National Weather Service, the average temperature for the state was below freezing for eight days from Thursday February 11 until Friday February 19. The average temperature on Monday February 15 was 11.8 degrees Fahrenheit, a new record low.[1] (While extreme, it is not uncommon for freezing temperatures to occur in winter. What was uncommon was for the state's electric grid to crash as a consequence of the cold temperatures and increased demand, causing millions in the state to be without power for several days and resulting in over 100 deaths.[2] Damages and economic loss for the state are estimated to be as much as $130 billion.[3]



Figure 11.1 National Weather Service map of Winter Storm Warning covering the entire state of Texas, February 14, 2021. SOURCE: National Weather Service.

The failure of the electric grid brought attention to the peculiar way that Texas manages electricity, in addition to the way that electricity is distributed across North America. People became immediately aware of the fact that Texas has its own electric grid, the Texas Interconnection, which is regulated by the Electric Reliability Council of Texas (ERCOT). Texas likes to be as free as possible from federal regulations, and having a grid entirely within the state's borders provides it that freedom since the federal government can only regulate electricity which crosses over state borders.[4]

Beyond that is an even simpler question. Why is it the responsibility of Texas to provide electricity? The provision of electricity, or at least some form of power, is considered to be by most a basic service to be provided to the general population. It is a component of energy policy, which itself is a component of public policy, which is the subject of this chapter. But why does it have to be government that provides it? Why not the private sector? And if a government is to provide it, why the state? Why not the

national or local government? These are among the questions addressed in this chapter.

11.1: What Is Public Policy?

11.2: The Public Policy Process

11.3: Federalism and Public Policy

11.4: Areas of Public Policy in Texas

11.5: The Relationship Between State and Local Policy in Texas

11.6: Why Public Policy? The Market and Market Failure

11.7: Conclusion

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1. NWS Weather Prediction Center @NWSWPC, “Just to continue to show how extreme last week's Arctic air insurgence was down in Texas, here is a daily depiction of the average temperature spanning 10 days. You will see based on this analysis, the coldest day was February 15th, with a state average temperature of just 11.8F!,” Tweet, Feb. 22, 2021, https://twitter.com/NWSWPC/status/1363859233335349250

2. Mitchell Ferman, Sami Sparber, and Elvia Limón“2 Million Texas Households without Power as Massive Winter Storm Drives Demand for Electricity,” *Texas Tribune,* Feb. 15, 2021, https://www.texastribune.org/2021/02...ackouts-texas/.

3. “AccuWeather Raises Texas Damage, Loss Estimate from Winter Storm to $130B,” Insurance Journal, Mar. 5, 2021, https://www.insurancejournal.com/new.../05/604122.htm

4. Kate Galbraith, “Texplainer: Why Does Texas Have Its Own Power Grid?,” Feb. 8, 2011, https://www.texastribune.org/2011/02...wn-power-grid/.

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11.1: What Is Public Policy?

Public policy can be defined as what governments choose to do, or not do. Governments may choose to make drinking liquor and smoking marijuana illegal, or not. Governments may choose to provide tuition for free primary and secondary education, or not. They may choose to extend that to the college level, or not. They might choose to expand health insurance coverage to all of its citizens, or not. Governments may also decide how to address laws that treat citizens unequally, or in the case of past laws that did so, how to make amends for them, or not. They might choose to continue developing transportation systems based on automobiles, or they may choose to shift these over to mass transit. These systems might include high speed trains from the major population areas within Texas, or they may not. Governments may also make determinations about what basic rights citizens have, and how to structure law enforcement procedures accordingly.

That is a simple way to approach the issue, but public policy is more complex than that as it involves the totality of what political institutions seek and what governments do. Here's a more expansive definition that includes the process, as well as the various actors within that process: "a system of laws, regulatory measures, courses of action, and funding priorities concerning a given topic promulgated by a governmental entity or its representatives."[5]

A large number of actors, in different capacities are involved in the public policy process. These policies can be implemented by the government, hired out to private firms, or simply encouraged by offering incentives and subsidies. They can include the policies delegated to the national government in the U.S. Constitution, as well as those reserved to states and to the local governments. They are established, shaped, and maintained by the political and governing institutions discussed throughout this book.

Policies can concern whether a good or service is provided, in addition to establishing basic rules about how people get along in public spaces. Is it ok for people to panhandle, or carry guns openly, or to feed the poor in a public place? These can include social policies which determine what types of things people can do in the privacy of their homes. It can also involve what types of things people cannot do, including what types of actions are not just illegal, but can result in someone being given a prison sentence. The range of policies and the activities related to them is vast, and may indeed be endless, but hopefully the following discussion can make them understandable.

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5. Dean G. Kilpatrick, National Violence Against Women Prevention Research Center, Medical University of South Carolina , "Definitions of Public Policy and the Law," Violence Against Women Prevention, 2000, https://mainweb-v.musc.edu/vawpreven...finition.shtml.

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11.2: The Public Policy Process

Students of public policy have long noted that the process of public-policymaking is circular. It has no real beginning or end. Nevertheless, categories help make sense of the process: agenda setting; problem identification; formulation; adoption; implementation; and evaluation.

Agenda Setting

The first step in the process is getting the item on the public and governing agenda, or taking advantage of an event which does the same. This is often done by interest groups that wish to push a policy objective. It also involves positive publicity, as well as efforts to control how a specific issue is presented to the public. In recent years, mass shootings have been used by gun control advocates to promote bans on the purchase of assault weapons, limits on the size of magazines, and background checks on gun purchasers. In response, gun rights groups have developed effective means for countering these attempts. They've been able to argue that gun control laws are ineffective, infringements on individual rights, and that the best way to counter a bad guy with a gun is with a good guy with a gun (**Figure 11.2**). This illustrates that groups not only attempt to get their preferred policies on the public agenda, they attempt to knock policies they disagree with off of it.



Figure 11.2 Rep. Matt Schaefer (R-Tyler) argues for H.B. 1927, which would allow Texans to carry concealed handguns without a permit SOURCE: Andrew Teas CC-BY.

In Texas, the top legislative and executive officials have the opportunity to impact the governing agenda at the beginning of each legislative session. They can determine which pieces will be prioritized within their respective spheres of influence. In early 2021, at the beginning of the Eighty-Seventh Regular Session of the Texas legislature Governor Greg Abbott listed five items as emergency items which, constitutionally, could be voted on prior to any other legislation that had been introduced. These included: "expanding broadband internet access; punishing local governments that "defund the police" as he defines it; changing the bail system; ensuring what he described as "election integrity"; and providing civil liability protections for businesses that were open during the pandemic."[6]

Dan Patrick, the lieutenant governor, had a different set of priorities which he placed at the front of the agenda of the Senate agenda. It was much more expansive than that of Governor Abbott and included "a 'Star Spangled Banner Protection Act' that would require the national anthem to be played at all events that get public funding."[7] The agenda of House Speaker Dade Phelan included "'weatherizing' the state's energy infrastructure to protect it from extreme weather, creating a statewide alert system for impending extreme events and improving communication between state agencies to better coordinate during disasters."[8] The variety of proposals on the agenda, along with the limited amount of time the legislature has to pass legislation, showcases the conflict that exists over what governments should prioritize.

Problem Identification

A closely related concern is how an item that comes to the public agenda is defined. The definition of that issue will often determine not only how people approach it, but what solutions are likely to be proposed for it. The political scientist E.E. Schattschnieider maintained that:

> The definition of the alternatives is the supreme instrument of power; the antagonist can rarely agree on what the issues are because power is involved in the definition. He who determines what politics is runs the country, because the definition of alternatives is the choice of conflicts, and the choice of conflicts allocates power.[9]

A key issue is whether, for example, an event reveals a problem or a condition. The difference is that problems have solutions, while conditions do not. Take for example the shutdown of the electric grid during the deep freeze in February 2021. Was that a problem or condition? You could argue that the freeze itself was a condition but the shutdown was a problem. But what kind of problem? And what kind solution would solve that problem?

Even while the shutdown occurred, the Texas Oil and Gas Commission and the Texas Railroad Commission sent out messages claiming that the problem was that wind turbines had frozen, and that the solution was to increase "reliable" energy sources such as oil and natural gas.[10] This message was quickly picked up and redistributed by other elected officials, including U.S. Congressman Dan Crenshaw (**Figure 11.3**). The American Clean Power Association rebutted the accusation, but by that time the initial claim had helped define the issue, and set the terms of debate.[11] The fact that these governing officials moved quickly on talking points created by the Texas Oil and Gas Commission is a great example of **agency capture**.



Figure 11.3. Congressman Dan Crenshaw (R-Houston). SOURCE: Andrew Teas CC-BY.

Policy Formation

Once an item is on the policy agenda and the underlying problem has been identified, the question becomes how this problem will be solved. There are two options depending on whether the problem needs to be addressed with new legislation, or whether existing legislation allows for the problem to be addressed through existing legislation. In the case of the former, the issue must be taken to the legislature since a new law must be passed. In the latter, one can bring up the issue with the relevant executive agency. An existing law exists which the agency already has the power to implement. The only question is what rule should be made to implement the law according to the wishes of the interest group.

This helps explain the purpose of the **iron triangle**, which connects interest groups with potential allies in legislative committees and executive agencies. Ideally the interest group—or whoever is promoting a policy—has preexisting connections with like-minded people in those institutions who are predisposed to formulate policies beneficial to them. It also explains the advantage of the **revolving door**, which ensures that people in the relevant committees of agencies have backgrounds with the interest group, or—as is often the case—vice versa.

For example, the president of the aforementioned Texas Oil and Gas Association is Todd Staples, who served two terms as Texas Commissioner of Agriculture. On April 20, 2020, Staples was appointed by Governor Abbott to be the leader of the Energy Working Group, which was part of the Governor's "Strike Force to Open Texas."[12] The purpose of the group was to protect the interests of the oil and gas sector during the early weeks of the COVID-19 shutdown. In other words, any policies related to the pandemic would be made with the interests of the oil and gas sector in mind.

Policy Adoption

At some point, an official decision is made to adopt the policy. Traditionally this means that he legislature passes a law, and the chief executive—in this case the governor—has opted to sign and not veto it. As we saw above, that can also mean that a rule may be passed instead by an executive agency, but we will save that for the section on implementation below. This seems simple enough, but since the passage of legislation requires a majority vote, and every member of a legislature has their own goals and aspirations—as well as interests to serve—the adoption of a one policy can have consequences for others.

Take log rolling, for example. **Log rolling** is the practice of vote trading by legislators. In order to ensure the passage of one's own bill, one legislator might agree to vote for that of another legislator. Legislation then sometimes passes not because it is on the agenda so much as that it is a practical necessity in order to ensure that passage of a different law. Policies can also be passed not because of popular support but rather because of the legislative skills of the members of the legislature.

Policies can be slipped in surreptitiously, without notice, in the form of a what is called a *poison pill amendment* designed to reduce support of the overall legislation. A noteworthy, failed, example occurred when Representative Howard W. Smith, a Democrat who represented northern Virginia from 1955 to 1967, introduced an amendment to the Civil Rights Act of 1964 including "sex" in the categories of discrimination made illegal in the bill.[13] The intention was to make the overall bill less likely to pass, but it passed anyway. Not only does this make sex discrimination covered by the Civil Rights Act, it has been recently used against bills which discriminate against transgender persons. Policies can sometimes be unintended consequences of the language in a bill.

They can also be intentional. While the previous policy was adopted by accident, policies can sometimes be subtly slipped in a bill by the careful use of language that may in the future allow for cases taken before the courts. In November 2019, the voters of Texas ratified an amendment prohibiting even the possibility of an income tax in the state (**Figure 11.4**). The amendment reads as follows: "The legislature may not impose a tax on the net incomes of individuals, including an individual's share of partnership and unincorporated association income."[14]



Figure 11.4 Senator Pat Fallon (R-Prosper) explaining H.J.R. 38, to amend the Texas Constitution to prohibit a state income tax in Texas. After passage by the House and Senate, Texas voters approved the measure by more than seventy-four percent. SOURCE: Andrew Teas CC-BY.

While this seems simple enough, legally there is a significant omission. The previous language included the phrase "natural persons."[15] This means an actual living, breathing, human. The word *persons* could also be interpreted to include corporate

persons. Critics wonder if this means that the amendment may also be used one day to strike as unconstitutional any taxes on businesses.[16]

Policy Implementation

This power, constitutionally, belongs to the executive branch. When the legislature passes a law, it sends the responsibility to enforce it to the appropriate executive agency. Occasionally a new law requires a new agency to administer it. In addition, the Texas Sunset Review Commission might suggest changes in, if not the abolishment of, state agencies. The commission has recently called for the Texas Racing Commission to be abolished, and its functions absorbed either by the Comptroller's office or the Texas Department of Agriculture. The commission makes its choice based on what seems best for the industry regulated.

The implementation of the law involves a rulemaking procedure established by the state and can be found in the Texas Administrative Code. The process is overseen by the Office of the Secretary of State. The SOS publishes the Texas Register on a weekly basis. It contains the rules proposed by Texas agencies, which are then open for public comment. After thirty days the comments are addressed, the rules are finalized, and adopted at the appropriate date. Attentive interest groups review the Texas Register regularly for rules which may impact them.

A key goal of interest groups is to ensure that the relevant agency is sympathetic to the group's needs. The best way to do so is to have input into who is appointed to the board or commission that heads the agency. The best way to do this is to make contributions to the governor's campaign since the governor makes the appointments. There are well over 100 boards and commission that are appointed by the governor. If the governor makes the appointment requested by the affected industry, the industry can have influence on its own regulations.

Policy Evaluation

This is the final official step in the policy making process, but as mentioned in the beginning, it leads back to the start. A negative evaluation of an existing policy can often put the policy back on the public agenda, Then the whole cycle starts again.

As opposed to other parts of the process, policy evaluation is highly public in nature. Just as is the agenda setting process, which is why the two can sometimes be considered to be one and the same. When events occur—such as the recent shutdown of the electric grid—questions natural follow, such as why did it happen? Who is responsible? And what changes can be made to existing policy to ensure that it does not happen again? Similar questions have been asked in the state in recent years about flooding in the Houston area, the explosion of a fertilizer company in West Texas, the shooting in Santa Fe High School (**Figure 11.5**), among many other incidents.



Figure 11.5 Illustrator Alex Haim was moved to memorialize the Santa Fe school shooting with "Again: May 18: Santa Fe, Texas; May 11: Palmdale, California; April 20: Ocala, Florida; April 12: Raytown, Missouri; April 9: Gloversville, New York; March 20: Lexington Park, Maryland; March 13: Seaside, California; March 8: Mobile, Alabama; March 7: Birmingham, Alabama; March 7: Jackson, Mississippi; March 2: Mount Pleasant, Michigan; February 27: Norfolk, Virginia; February 27: Itta Bena, Mississippi; February 24: Savannah, Georgia; February 14: Parkland, Florida; February 9: Nashville; February 5: Oxon Hill, Maryland; February 1: Los Angeles; January 31: Philadelphia; January 23: Benton, Kentucky; January 22: Italy, Texas; January 20: Winston Salem, North Carolina—22 campus shootings where someone was injured or killed in the first 20 weeks of the year"" SOURCE: Public Domain.

The media plays an obvious role in this section, and interest groups try to influence how the media addresses policies relevant to them. Word choices can go a long way to influencing how people process the information they receive. The Texas Oil and Gas Association has recently persuaded supporters to call electricity generated by oil and gas *reliable* energy. That subtly infers that electricity generated by wind and solar power are unreliable. In turn, of course, the wind and solar industry has used the terms *renewable* to define their field, carrying the inference that oil and gas is finite.

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11.3: Federalism and Public Policy

Chapter 2 on federalism explains that the **American federal system** is divided into three levels: national, state, and local. And despite the fact that there is overlap between them, each has its own functions. The policies each focus on vary, State policies vary depending on their political culture. Some may choose to be generous in the provision of social services; some may not. Some may enforce equal opportunity programs vigorously; some may not. Some may adopt a tough on crime approach; some may not. As long as the policies fit within what is allowable by the U.S. Constitution, states may do what they choose. There are areas where the national government has expanded its jurisdiction due to events and circumstances that brought doing so to the public agenda.

The national government was set up to do two specific things: facilitate the development of commerce and provide security both internally and externally.

Interstate and International Commerce: Infrastructure

Many areas of policy are shared by all levels of government. Key among these is the development of the infrastructure necessary to support an expanding economy. These are topical given President Joe Biden's recent proposal—called the American Jobs Plan—to spend over two trillion dollars on infrastructure improvements across the nation, many in partnership with the states. The term **infrastructure** can loosely be defined as "the basic physical and organizational structures and facilities needed for the operation of a society or enterprise."[17] These include large scale enterprises such as the interstate highways systems and electric power production and distribution. Spending on these projects have always been controversial, though even early opponents of national power in the nineteenth century such as South Carolina's states' rights advocate John C. Calhoun supported efforts to "bind the Republic together with a perfect system of roads and canals."[18]

The ability to pass laws related to commerce is shared by all three levels of government, which includes policies related to the infrastructure necessary for commercial growth. Co-mingling of these powers can be seen in airports, for example, which are authorized by county governments (on the local level) and owned by state and local governments (on the state level), but funded partly with grants from the federal government (on the federal level). The federal government also requires that airports be self-sustaining, such that airport revenue supports the airport without taxpayer contributions.

The national government began promoting interstate transportation with federal aid to roads in the eighteenth century. Such infrastructure development was a means to enhance the commercial opportunities of the new nation. These policies continued throughout the nation's history. In the nineteenth century, the government focused on the development of railroads. Starting in 1848, Houston aggressively sought rail lines that would connect its port (another example of an infrastructure project supported by national, state, and local government) with other cities in Texas and eventually the entire nation as part of the Union Pacific Railroad.[19] In 1852 the state approved the railroad that initially connected Houston to the Brazos River. Texas gave land grants to encourage such railroad development. Companies would receive eight square miles of land for every mile of track they laid out. Cities and counties also enticed railroad companies to build rail lines by issuing local and municipal bonds, a practice that the 1876 Constitution would later forbid.[20] In addition, state efforts in the nineteenth century ensured that the oil and gas industries would be centered in Texas. This involved establishing strong relationships with the national government and office holders of both parties.

The development of automobiles and the growth of the trucking industry in the twentieth century shifted attention to the construction of freeways and bridges, and similar efforts encouraged the development of highways across the state and the nation. The legislation funding the creation of the national highway system was justified by President Dwight D. Eisenhower in the 1950s. He deemed a national highway system necessary as a defense project based on his experiences driving across the nation in an army caravan in 1919.

Today, policies for infrastructure involve transportation, including highways, bridges, ports, and air traffic, as well as power supplies. The expansion of national authority—in the form of assistance for economic growth—remains an easy sell for Texas. Tens of billions of dollars from the national government flow to the state every biennium to assist with the construction of highway projects. These include the $1.063 billion spent on the State Highway 288 Toll Lanes Project.

Internal and External Security: Immigration

While immigration policy is set at the national level, the practical reality is that it is impacted by policies on all levels of government. This is especially true in a border state like Texas, which has a history as a part of Mexico and an economy that relies heavily on immigrant labor—both documented and undocumented. Often these laws work against each other, which reflects the ambivalent nature of opinion about the subject. While many oppose, for example, laws that provide benefits for the undocumented, many of these same people enjoy the advantages that come with the cheap labor they provide. Entire industries in the state rely on it, including agriculture, bars and restaurants, construction, and housekeeping. And while some—primarily older Whites—admit to being threatened by the changes being made to Texas by the influx of immigrants, others not only welcome the changes but seek to expand them. Immigrants have always brought unique skills with them, and those skills provide business opportunities.

Conflicts over immigration to the United States began soon after independence, continue to this day, and will almost certainly continue as long as people seek to emigrate here. Few laws, if any, placed limits on immigration during the American colonial era. The U.S. Constitution says nothing about immigration. Instead, the U.S. Constitution gives to the U.S. Congress the power to "establish a uniform rule of naturalization."[21] These are different. **Immigration** is "travel into a country for the purpose of permanent residence there,"[22] while **naturalization** is the legal process by which a person can become a citizen of a country.[23] The First Congress used this authorization to pass the Naturalization Act of 1790, which immediately sought to restrict immigration to any alien who was a free White person of good character who had lived in the United States for at least two years.

In the 1800s, the eyes of Americans gazed West as the Louisiana Purchase opened new lands to American settlers. Aaron Burr, former vice-president under Thomas Jefferson, considered making his fortune by claiming parts of this territory for himself (for which he was tried and convicted for treason).[24] Many of the migrants who would populate Texas were part of this westward movement. They were recruited to help occupy, settle, and govern Texas, though Spanish and Mexican policy regarding Anglo immigration into Texas vacillated depending on whether they saw the Anglo arrivals as a potential source of political instability and rebellion or as necessary for the economic development and security of the northern territory. American immigration laws, as well as immigration policies in Texas, vary expeditiously as well.

Since then, over two dozen major laws have been passed by the United States Congress that have adjusted the criteria for both immigration and naturalization, depending upon the needs of the nation at a particular moment in time. For example, the Burlingame-Seward Treaty of 1868 opened immigration from China to the United States when labor was needed on the West Coast. By 1882, when the demand subsided, the Chinese Exclusion Act was passed to not only limit immigration but also create the concept of "illegal immigration."[25] This was the idea that unauthorized presence in the nation was a crime. Prior to this, laws primarily concerned naturalization—who could become a citizen, who could vote and participate politically, and who could receive benefits from the government. Currently some opponents of immigration also define it in terms of an "invasion" which the national government is required to stop under the language of Article 4, Section 4 of the U.S. Constitution.[26]

In *Chy Lung v, Freeman* (1875), a case from that period, the Supreme Court ruled that the national government, and not the states were responsible for immigration policy.[27] In the 1860s, some states began passing laws restricting immigration into the state. California passed a few such laws in response to hostility towards Chinese immigrants from the general population, and from labor unions. The California Immigration Commissioner sought to deport Chy Lung on the grounds that she was "lewd and debauched."[28] She appealed and won. Part of the Supreme Court's reasoning was that state immigration laws could undermine foreign policy, which is fully a national concern.

In the minds of many in Texas, conflict over immigration comes down to securing the border, but any interest in regulating immigration into Texas is limited by the pragmatic fact that its border with Mexico is long, desolate, and hostile. Physically containing it is costly and difficult. Some consider it pointless since the great expanse of territory, largely lacking in water and other resources, creates a natural barrier. What's more, Texas's historical past as a Mexican state, and the ties that continue to exist between many residents and Mexico, have made the border porous. People flow back and forth in population centers such as Laredo and El Paso, often living on one side and working on the other. The border economy depends on the relative ease of traveling back and forth.

From the passage of the Immigration Act of 1891 and into the twentieth century with the creation of the Border Patrol in 1924, the Bureau of Immigration and Naturalization Service in 1933, and the tellingly named Operation Wetback in 1954, it has become increasingly difficult to cross over—primarily when going from Mexico into the United States. These immigration programs demonstrate that the national government was increasing both its attention to immigration issues and its ability to enforce those rules.

Other events also raised the profile of border security. Battles occurred along the border during the Mexican Revolution of 1910–1919. These included conflict near El Paso and raids on San Ygnacio. The United States military ventured into Mexico in an unsuccessful attempt to capture one of those responsible for the border incursions—Pancho Villa. Thus, border security became intertwined with national security. Increased violence associated with drug smuggling, people, and more recently the so-called *caravans* of refugees escaping hardships in Central America have helped raise awareness of the permeability of the border, and immigration is increasingly seen as harmful and threatening and defined as a public safety issue.

The Texas legislature commonly addresses a variety of issue that either directly or tangentially impact immigration in the state. In 2017 the legislature tried to address the hiring of undocumented workers by mandating the use of the E-Verify system , where employer information is cross-checked against records for the Department of Homeland Security in order to determine if applicants were in the country legally (SB 374). In the same session, the legislature passed a law purporting to ban **sanctuary cities,** cities that protect the undocumented populations from state and local laws targeting them (SB 4). Currently the legislature is considering repealing the Texas Dream Act which was passed in 2001 providing in-state tuition for undocumented students (HB 2862).

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11.4: Areas of Public Policy in Texas

The state of Texas, as well as all local governments in the state, are involved in a large range of public policies. Each individual type of public policy is sometimes called a *policy arena*. These can be difficult to comprehend unless there is an overarching structure that helps make sense of it. The Fiscal Size-Up (FSU), which is produced after every meeting of the Texas legislature by the Legislative Budget Board does so, and the FSU format is used in this chapter. A list follows with the policy arenas in the FSU arranged in order of the amount of money the state spends on each:

1 – Education;
2 – Health and Human Services;
3 – Business and Economic Development;
4 – Public Safety and Criminal Justice;
5 – Natural Resources;
6 – Regulatory.

Education

Education has had its own Article in the Texas Constitution since 1845. Currently it is Article 7. The lack of a system of public education was one of the grievances in the Texas Declaration of Independence. Not only did it mention education, it also mentioned how it would be funded. Education is the most well-funded of all of Texas's public policies, with seven agencies managing education policies in the state. Despite this, Texas ranks thirty-sixth in spending per each student in the country.[29]

Defining the purpose of education is a key area of debate within the state. The Texas Constitution—building off the Texas Declaration of Independence—states that the "general diffusion of knowledge [is] being essential to the preservation of the liberties and rights of the people."[30] Since then, it has also been argued that education is necessary to build a skilled workforce in the state. Land grant universities were funded nationally with the idea that they would provide the practical education necessary to develop the newly acquired territory to the west of the Mississippi. The practical concerns focused on agriculture and mechanics, which explains the name of Texas A&M University. Forces also argue that education is a basic human right, essential for the ability of each individual to live a full enriching life. And as a right, it is one to be provided equitably throughout the state. Doing so, the argument continues, also empowers minority populations to attain an equal position in society.

Unequal Education: Segregation Texas has never embraced the notion of equal education. It practiced legal racial segregation and continues to allow *de facto* segregation in the boundaries of school districts and the drawing of school attendance zones. It also has a school finance scheme that allows for large disparities in finance. The push for quality education across racial lines has gone hand in hand with the push for civil rights in the state. Two court cases exemplify the push. In 1946 Heman Sweatt applied for admission to the University of Texas Law School despite his ineligibility as an African American to attend. The school was restricted to Whites. In an attempt to comply with the separate but equal doctrine that made segregation legal in 1896,[31] the state of Texas rapidly created a "law school for Negroes" which is now the Thurgood Marshall Law School at Texas Southern University.[32] In ***Sweatt v. Painter*** (1950), the court not only ruled that the new law school was not an equal facility, the act of separation "harmed students' abilities to compete in the legal arena"[33] The UT Law School had to desegregate. In 1954, the separate but equal doctrine was overturned nationally by the Supreme Court on the similar grounds and declared unconstitutional.[34]

Despite these legal victories, White communities continued to resist racial integration. In 1956 a federal judge ordered the desegregation of Mansfield High School, but up to 400 White residents formed a ring around the school in order to prevent three Black students from enrolling. The mob turned violent. Governor Allen Shivers called in the Texas Rangers but not to confront the mob. Instead, they upheld segregation and allowed the school board to transfer the students out of district. The Mansfield schools remained segregated for another decade.[35] Texas born federal judge William Wayne Justice issued a large number of decisions mandating desegregation of schools in the state, which led to him being called "the most hated man in Texas." Recent studies show that despite the attention once paid to desegregation, Texas schools not only continue to be divided racially, but that state leaders "have largely abandoned racial integration as a tool for equity."[36] Instead they seek unspecified alternative ways to expand educational opportunities to all Texas students regardless of race or ethnicity.

Equal Funding Inequity continues in education across Texas due to how the state funds schools. While each district is funded

by the state equally, roughly $5,140 per student, about sixty-four percent of the revenue available for school districts comes from locally collected property taxes. These can vary significantly based since some of the 1,019 districts in the state are wealthy, and some are not. This means that some districts can spend more money on facilities and teacher salaries than others. This disparity led the San Antonio Independent School District (ISD) to file a federal lawsuit in 1968 arguing that the disparity violated the equal protection clause of the Fourteenth Amendment to the U.S. Constitution. The result in ***San Antonio Independent School District v. Rodriguez*** (1973). was unsuccessful. The court ruled that the difference was not "invidiously discriminatory" and that they couldn't really claim that a fundamental right had been denied to them since there is no clearly written out to education in the Constitution.[37] Because of this, the next major case involving inequity in school finance happened in the state courts, and focused on the provision in Article 7 of the Texas Constitution that mandates that "it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."[38]

The argument in ***Edgewood Independent School District v. Kirby*** (1989) was that the relatively low level of funding provided by the state to schools in the state, led to a reliance on property taxes collected at the local level, which led to the imbalance in funding. The property values within the Edgewood ISD boundaries were $1.2 billion, while that of a neighboring district—Alamo Heights ISD—was $6.5 billion. And despite the fact that the tax rate assessed by the Edgewood district was higher than that of Alamo Heights, funds raised by Edgewood were less than Alamo Heights, as were the facilities they could provide their students. In *Edgewood ISD v. Kirby*, they argued that the Texas legislature was not complying with the Texas Constitution and the Texas Supreme Court agreed. The court mandated that the legislature provide an equitable school finance system, and the legislature responded with a program that recaptures property taxes from wealthy school districts and distributes them to poor districts. Though officially called *recapture,* it has been dubbed the *Robin Hood Plan*, and although unpopular, remains in place.

Control and Curriculum In addition to segregation and funding, controversies also exist concerning the structure of schools and the relative control of state and local forces over what subjects are taught, how they are taught, and how the curriculum will be evaluated. The 1869 Texas Constitution created a state-run primary and secondary education system, which was replaced with one controlled by local forces under the parameters set by the state. Currently the state kindergarten through twelfth grade (K–12) system is overseen by the Texas Education Agency (TEA). The TEA is headed by a state appointed commissioner of cducation appointed by the governor and overseen by and State Board of Education (SBOE). Each of its fifteen members is elected from a single-member district drawn across the state for overlapping four year terms. Public schools are actually run by over 1000 independent school districts across the state, each of which is overseen, and has their tax rates set by, an elected board of trustees. They also hire a superintendent to administer education within the district.

Board members are elected in partisan elections, which has allowed the board to become driven by ideological conflict concerning how subjects—primarily touchy ones like government, history, sex education, and science—are taught. In addition to overseeing the policies and setting academic standards, the board is responsible for the **pre-approved state textbook selection**. Many people involved in this process are ordinary citizens passionate about what schools teach. Social conservatives tend to have objections to the content of sex education classes, preferring they focus only on abstinence. They also raise objections to the discussion of evolution, asking that science textbook teach the controversy regarding creationism. Recently questions have also been raised concerning which historical figures should be highlighted in textbooks, and whether they should include civil rights activists such as Malcolm X (who championed African American rights in the 1960s) and Caesar Chavez (who championed the rights of Mexican American farmworkers in the 1970s). A recent controversy emerged when a Pearland High School student noticed that enslaved Africans brought to the United States were referred to as "workers."[39] (Given the size of the Texas market, it has been suggested that textbook publishers orient their books around what is acceptable to the state, meaning that the influence of the SBOE extends beyond state lines.)

Charter Schools and School Vouchers Debate also exists over alternative options for education such as charter schools. Increasingly education reformers have raised the question of whether the public school model should be the dominant one in the state. Proposals have been introduced to broaden access to charter schools and to issue school vouchers. The appointment of Michael Morath, the current Commissioner of the TEA, is considered to be an effort to bolster the charter education sector in the state. Morath, who has a background as a tech entrepreneur, ran for an open unopposed seat on the Dallas ISD board in 2011. Once there he became part of a group that tried, unsuccessfully, to convert the entire Dallas ISD into a home rule district charter (i.e., an autonomous and independent), meaning that all its schools would be charter schools.

A **charter school** is a school that receives government funds, is accountable for results, but which are run according to whatever rules they set for themselves. More significantly, they are generally for-profit organizations, meaning that they are supported by business interests. School vouchers are different, and simpler in many ways. A **school voucher** is simply a certificate that provides to any school that a student goes to, government revenue. It is based on one of the characteristics of public school finance, student attendance. Schools take attendance so that they can receive the appropriate level of funding from the state. The idea behind vouchers is that the money will follow the student to whichever educational institution the student wishes to

attend. Private schools would benefit from this programs, and proponents of private schools promote them, but critics argue that they would undermine public schools and undermine the role they have played in educating and enhancing the wellbeing of racial minorities. School vouchers are an example of privatization—a key mechanism of New Federalism (see chapter 2)—and legislation establishing them are a steady feature of each session of the legislature.

Standardized Testing In the 1970s, various groups were becoming concerned with the quality of education in the state. Many of these were business groups worried about the basic abilities of students who were graduating from high school. In 1979, the legislature responded by passing laws that required the measurement of basic skills, these became the basis for a variety of testing regimes that have been implemented, and themselves revised. The efforts caught fire nationwide and different states were encouraged to experiment with different ways to increase student performance. One items that stuck, and became nationalized, was **standardized testing**.

Standardized testing is an example of what is called *outcome-based education,* which simply means that the quality of education is evaluated by a student's achievement of measurable outcomes, such as those collected from standardized tests. A series of different test were implemented from 1980 until 2011 until the **State of Texas Assessments of Academic Readiness (STAAR**) was created in 2011. The purpose of the test is to determine whether students have adequately learned the curriculum they are taught. Conveniently enough, the TEA lays out the curriculum standards in the Texas Essential Knowledge and Skills (TEKS) Everything you were supposed to have learned from kindergarten through high school is laid in these TEKS curriculum standards.

Standardize testing is controversial for a number of reasons, including whether they're really necessary and whether the solution to the alleged deficiencies of education is more testing rather than more teaching. Teachers and parents complain that classroom instruction is oriented around preparation for the test rather than education. Suspicions exist that performance on tests only indicates the test taking ability of students, not their general knowledge. The cumulative results from the test can result in punishment for the schools and teachers involved, which places additional burdens and stresses on the school and students. What's more, suspicions also exist that the tests are based more on the political muscle of the publishing companies that produce and administer the them than they are on the wishes of the educational sector trying to improve teaching. Debate still centers on whether other aspects of education suffer as a result of the attention paid to these tests.

Higher Education Higher education is divided into two-year institutions—community and technical colleges—and four-year institutions, which can also offer graduate degrees. Texas also funds a variety of professional schools, including schools of medicine, law, dentistry, and veterinary science. In addition to public schools, Texas is home to private universities. Funding for higher education comes from a variety of sources, including tuition, the **Permanent University Fund (PUF)** and **Higher Education Fund (HEF)**, and the federal government. As discussed in chapter 10 on local government, community college districts can also collect property taxes since they are organized as special purpose districts much like independent school districts.

As with K-12, higher education exists in order to advance the economic interests of the state. This goes beyond training a workforce and includes efforts to establish Texas as a center for research. Business opportunities can then develop from the research. Some examples include the Center for Superconductivity, which is supported by the University of Houston, and the Cancer Prevention and Research Institute of Texas (CPRIT). CPRIT is supported by the Texas A&M Institute of Bioscience and Technology, the Baylor College of Medicine, the University of Texas's MD Anderson Cancer Center, the University of Texas Medical Branch, the University of Texas Health Science Center–Houston, the University of Houston, and Rice University, among others. The University of Texas, and others, have also established partnerships with industry leaders in technology.

The **Texas Higher Education Coordinating Board (THECB)** was created in 1965 in order to make the delivery of higher education more efficient in public institutions. Programs and new construction must be approved in order to ensure that state money is allocated effectively.

Health and Human Services

The reserved powers of the states (see chapter 2) are primarily involved with the police powers, which are defined as "welfare, health, safety, and even morals."[40] These include policies related to the poor and public health, and to the degree that attitudes about provision for these are dependent upon opinions regarding the consequence of individual behavior, they also include policies related to morality. Texas's historical focus on traditionalism and individualism has made it reluctant to engage in these policies statewide with any seriousness. These were instead sent down to local government, as well as private charitable institutions.

Poverty in Texas The determination of who was and was not eligible for benefits has been left up to the local community. They were also able to make determinations for themselves about who was eligible for assistance, and what that assistance would be.

For example, Section 8 in Article 16 of the original 1876 Constitution stated:

> Each county in the State may provide, in such manner as may be prescribed by law, a manual labor poor house and farm, for taking care of, managing, employing and supplying the wants of its indigent and poor inhabitants.[41]

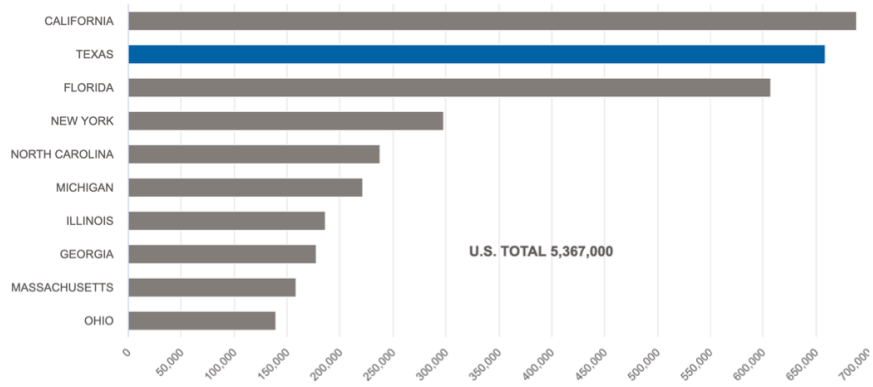
Regardless of opinions about the poor, the following agencies have been created to address health and human services. In order of size they are: Health and Human Services Commission; Department of Family and Protective Services; Department of State Health Services.

Health and human service policy is now the second largest area of spending in the state. This is not, however, due to any shift within the state of attitudes about the poor; these remain roughly the same. Rather, it is due to the expansion of federal power beginning with programs related to the **New Deal** and continuing with the **Great Society** (see chapter 2). These involve policies passed by the national government and run by the states. Some of these began in the 1930s—most notably the inclusion of Aid to Dependent Children (ADC) in the Social Security Act of 1935. ADC became the basis for what is commonly—and often derisively—called *welfare*. In 1965 it was reformed as **Aid to Families with Dependent Children (AFCD)**, and in 1996 further modified into **Temporary Assistance for Needy Families (TANF).** In each case, funding is made available for the ultimate purpose of taking care of children, with the idea that such care should be provided by the child's family rather than a government in the form of an orphanage or other such facility.

Public Health The largest of the programs for those with low-incomes is **Medicaid,** which was passed in 1965 as part of the Social Security Amendments of 1965. It provides funding for medical assistance to the poor. These mark a compromise of sorts in that benefits will be provided, by law, to the poor, but eligibility requirements can vary depending on what is suitable to the state. Less controversial poverty programs, those related to old age, are not only funded nationally, but are run nationally as well. These are **Social Security**, which is a system of old age pensions that people pay into over the course of the working lives, and **Medicare**, which runs on the same principle, but is intended to fund medical assistance for those over sixty-five. If you have a job, you might notice that you pay two forms of payroll taxes to fund each. One is Federal Insurance Contributions Act (FICA) and the other is Medicare. These go, respectively to the programs associated with each.

Social Security and Medicare are not state programs, even though they address problems that were the primary focus of state policy prior to the 1930s. The national government has in essence taken over care of the elderly. The states did not complain because the issue was not controversial. The recipients paid into each program, so they have covered the costs associated with it, and have legal rights to the money. And assistance for the elderly, especially those that are no longer able bodied, is generally considered worthy of funding. This is not the case with assistance to the poor. It is paid out of regular tax funds, and can be given to people that some consider the able bodied poor, people not worthy of support. This is why the states wanted control over it. The agencies established to oversee these programs in Texas, in other words, are not so much in charge of delivering the support, but ensuring that it is limited to those the state determines is worthy.

Affordable Care Act (ACA) Currently controversies involve the expansion of Medicaid offered to all the states in the **Affordable Care Act (ACA**) of 2010. As part of the effort to increase access to health insurance, the ACA authorized states to expand eligibility to persons with incomes up to 133 percent of the federal poverty line (**Figure 11.6**). The national government would reimburse the states for the additional costs. Initially it would reimburse the states fully, then that figure would gradually go down to ninety percent for perpetuity. Texas was one of a handful of states to not only refuse the expansion but also to sue to stop the national government from forcing it to take the money in order to expand access to health insurance. Battles continue within the legislature regarding whether Texas will eventually agree to expand access to Medicaid.



Notes: Estimates are from May 2020 and may change depending on new employment, the future impacts of COVID-19 and any federal legislation adopted to address those impacts. Uninsured estimates do not take into account unemployed workers who retained coverage through a spousal employer, Medicaid or the individual insurance market or family members of the recently unemployed and uninsured, many of whom also lost health insurance coverage. Definitive coverage data will not be available until 2021, when the U.S. Census Bureau's American Community Survey publishes health insurance estimates for 2020.
Source: FamiliesUSA

Figure 11.6 Estimated Number of Uninsured Due to Job Loss, 10 Most Populous States and U.S., February – May 2020. Texas has the highest overall percentage of uninsured in the country. Texas Alliance for Health Care estimates that the number of uninsured Texans could be 6.1 million by 2040.

Business and Economic Development

Over time, Texas has positioned itself as a leader in business in the nation. This didn't happen by accident. It was the result of over a century of consistent effort. Rick Perry, who served as governor from 2000–2015, actively lured businesses to the state, going so far as to take out radio commercials in California to try to persuade businesses to relocate to Texas.. Perry stated that Texas was "open for business," meaning he wanted California businesses to move to Texas.[42] Critics have argued that he did so by providing tax breaks and subsidies, sometimes to "hand- picked companies" with ties to his own high-dollar campaign donors."[43] In 2005, Perry convinced the legislature to create the Emergency Technology Fund which allowed him the ability to direct "state venture capital to high-tech startups."[44] Controversies regarding the success of its efforts led to Perry's successor, Greg Abbott, terminating the fund, but replacing it with one of his own, the Governor's University Research Fund, oriented towards attracting "top researchers to public universities" in the state.[45] Governor Abbott has continued such efforts by, more recently, trying to convince Facebook to open a second data center in the state.[46]

There is nothing new about these efforts. Similar efforts were made to ensure that Texas was center for the petrochemical industry and aerospace. Dallas petitioned successfully in 1914 to be the headquarters of one of the branches of the Federal Reserve. Austin emerged as a center of high tech research and development, and more recently music and film. In the early 1900s, business leaders in Houston convinced the federal government to contribute matching funds to deepening and widening the Houston Ship Channel, which is now one of the world's largest ports despite being fifty miles inland from the Gulf Coast. This effort was aided by the development of railroad transportation since the Port of Houston, unlike the Port of New Orleans which lies at the mouth of the Mississippi River, is connected to no substantive waterways. More recently, funding has increased on cancer research, including the development of pharmaceuticals. This has blossomed into the advancement of bio-tech. The Eighty-Seventh Texas Legislature is considering requesting bonds to be sold to assist the development of brain research. All these efforts will aid in the continued expansion of medical research facilities in the state, primarily Houston's Texas Medical Center which was established in 1945, and now contributes over twenty-five billion dollars to the economy each year.[47]

While a pro-business mindset permeates almost all public policies in the state, These specific agencies are charged with implementing them. In order of size, they are: Texas Department of Transportation; Texas Workforce Commission; Department of Housing and Community Affairs; Texas Lottery Commission; Department of Motor Vehicles. They cover business policy; labor policy; transportation policy; housing policy; workforce policy; gambling policy.

Over eighty percent of the expenditures in this section go to the Texas Department of Transportation, most of which are on the "planning, coordination, acquisition, construction, preservation, and operation of the state's transportation systems and services."[48] Federal funds are significant part of its revenue stream meaning that much of what it does is in cooperation with the

United States Department of Transportation. Related controversies are numerous. These include the ongoing question of whether automobile transportation is preferable to mass transit, and even if it is, whether gas powered cars and trucks are the future of transportation. There is also the question of self-driving cars and whether we are likely to see situations in the future where people are not in control of their cars on the highway. The answers to these questions, to a large extent, will come from the private sector, not the public sector, since they will be driven by the choices consumers make when they purchase cars in the future.

The federal and state governments will still be involved in laying out highways, as they traditionally have, and this leads to one of the more serious controversies since when highways are built in developed areas, existing structures—including whole neighborhoods—are sometimes displaced. Critics argue that the locations of highways have a greater negative impact on poor communities since they lack the resources to challenge the decisions made about where the highways will be built. Other critics have noted that the placement of highways can reinforce racial barriers. As legal means of segregating races have been minimized, these tangible ways of doing so have increased. Currently in Houston, proposals by the state to expand I-45 have meet resistance from a variety of sources, including local governments.[49]

The continued focus on highways, as opposed to mass transit, has also contributed to urban sprawl, where developers continue to build out beyond a city's center in ways that are unplanned and with little regard for the impact they are likely to have on other areas.[50] Cities like Houston now span over 600 square miles and encroach upon what used to be farmland. One unintended consequence of this expansion has been more flooding. Open land that once allowed for rain water to be absorbed into the ground has been built upon. The water is now displaced and flows to lower elevation areas. The greater amount of water often is more than the existing drainage infrastructure can handle, leading to property damage and even deaths during severe floods.[51]

The expanse of highways also contributes to air pollution in the state, primarily in urban areas. These problems can also be deadly for older people and anyone with breathing difficulties. Summers can be especially brutal since the combination of heat, ozone, and particle pollution can lead to periods where it is unsafe for vulnerable populations to go outside.[52]

Public Safety

The provision of safety and security is perhaps the most basic function of a government. The enticement of Anglos to settle Texas was driven by the hope that they would assist in securing Mexico from raids by the Comanche. Many of the current debates concerning the balance between gun rights and safety are couched in this language (**Figure 11.7**). These policies can be complex however, and sometimes even contradictory. While these policies are set at the state level, they are also set—as well as implemented—primarily at the local level. This isn't true for all of areas of policy—immigration and military, for example—but the activities of local officials are often the truest measure of the nature of the specific policy. The local officials that oversee these policies are—in the case of county officials—elected county wide. This is true for the sheriffs and district attorneys. Indirectly this is also true for the municipal officials as well since they are hired and fired by the elected mayor, depending upon the form of government.



Figure 11.7 "Pow, You're in Texas, Son. Texas-Sized Keep Away Sign." SOURCE: faster panda kill kill is licensed under CC BY 2.0.

In order of size, the specific state agencies are: Department of Criminal Justice; Department of Public Safety; Juvenile Justice Department; Military Department; Alcoholic Beverage Commission; Commission on Law Enforcement; Commission on Fire Protection; Commission on Jail Standards.

Department of Criminal Justice and the Juvenile Justice Department With the exception of the Department of Public Safety and the Texas Rangers, which are regulated by the state, law enforcement is a local matter. However, the state plays a role in oversight with three separate commissions that establish basic rules associated with not only law enforcement but also fire protection and jails. The principle area of spending in the Department of Criminal Justice is the running of penitentiaries (for more in-depth coverage of the criminal justice system, see chapter 12). Given Texas's punitive attitudes toward crime and criminals, the conditions in these facilities are rough. Often these are rough enough to raise questions about whether they amount to cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution. Similar accusations have been made about juvenile justice in the state. In fact, the current Juvenile Justice Department was established in the state in 2011 after sexual abuse scandals led to the termination of the Texas Youth Commission.

Texas Military Department The Texas Military Department dates to the days of the republic, when it was an actual military. Currently it provides assistance during times of disaster and helps with border security.

Alcoholic Beverage Commission The Texas Alcoholic Beverage Commission (TABC) oversees the enforcement of liquor laws in the state which set in place at the end of Prohibition. The legality of most types of alcohol remains a local matter in the state, but the enforcement of laws related to producing, distributing, and selling alcohol is handled by the TABC.

Natural Resources

A discussion of natural resource policy must begin with noting that in Texas the largest landowner is the state. It owns 22.5 million acres of land. By contrast, the largest private landowners are the heirs to the King Ranch, who own just over 900,000 acres.[53] This might seem to be an unusual statement to make, but it is an important point because it impacts much of what Texas does. Consider that the federal government is the largest landowner in most western states. It owns eighty percent of the land in Nevada, sixty-three percent of the land in Utah, and forty- seven percent of the land in Wyoming. In comparison it owns 1.9 percent of the land in Texas.[54] The was purchased by the federal government in order to create national parks, forests, and monument, as well as military bases such as Fort Hood. Most federal land is contained within the Big Bend National Park.

The land owned by the state is managed by a handful of agencies. When Texas won independence, it laid claim to over 250 million acres of public land.[55] Being cash poor, this land was its major source of wealth for both the republic and the early state. Land grants, as well as the sale of public lands, helped that state attract railroads, and the investments of the use of public lands—primarily from the production of oil and gas, and the mining of minerals— continues to help fund education on the state. In order, the largest natural resources agencies follow: General Land Office and Veteran's Land Board; Department of Agriculture; Parks and Wildlife Department; Commission on Environmental Quality; Water Development Board; Railroad Commission. They cover agriculture policy, environmental policy, land policy, water policy, and energy policy.

General Land Office The General Land Office (GLO) dates back to the Texas Republic and administers laws related to public lands and properties the state owns the mineral rights to, as well as the proceeds from their use and sale.[56] This comes to 20.5 million acres, which includes land off shore extending 10.3 miles. The office is headed by an independently elected commissioner. Since the revenue from much of the land is tied into education, the commissioner is also charged with overseeing the Permanent School Fund. In 2015 Commissioner George P. Bush (**Figure 11.8**) ruffled some feathers by terminating a contract Texas had with the Daughters of the Republic of Texas to run the Alamo in order to allow the state to take over the development and management of the site. In 1946, the Texas legislature created the Veterans

Land Board, and made funding available for veterans returning from World War II. Since then, the state has established other similar boards, all run by the GLOC.



Figure 11.8 Commissioner of the Texas General Land Office George P. Bush

Department of Agriculture Texas began as an agrarian state, and while agriculture is no longer dominant, it is vitally important. In 1907, the state created the Department of Agriculture to promote Texas agriculture and assist with research. It also receives federal funds in order to Support Child and Adult Nutritional Programs (SNAP). In addition, it is responsible for rural health and economic development.

Texas Parks and Wildlife Department Hunting, fishing, and outdoor recreation are important to many in the state, and the state has had a series of commissions and departments to oversee them. In 1963, these were merged into the Texas Parks and Wildlife Department which operates ninety-five state parks and historic sites, in addition to the Texas Historical Commission. Part of its mission is to ensure that these opportunities are made available for future generations, which is why licenses are required to engage in them and these are enforced by law enforcement officers—game wardens—which can make arrests for any offence. In 2015, Texas voters approved an amendment stating "the people have the right to hunt, fish, and harvest wildlife," [57] which meant these were constitutionally enforceable rights. In 2019, Texas voters approved a different amendment mandating that money collected from the sale of sporting goods is automatically appropriated to the Texas Parks and Wildlife Department and the Texas Historical Commission.[58]

Commission on Environmental Quality The Commission on Environmental Quality (TCEQ) oversees environmental policy in the state, but it is not the only one. The Texas Railroad Commission's Surface Mining and Reclamation Division, the State Soil and Water Conservation Board, as well as the Low-level Radioactive Waste Disposal Compact Commission are also involved in environmental policy. In each case, criticism have been leveled based on the governor's appointment of individuals believed to be more sympathetic to the needs of industry than that of the general public. Tension often exists between the decisions of the TCEQ, and its national counterpart, the Environmental Protection Agency. The EPA has criticized the TECQ for being too lenient on polluters in the state, threatening to remove the TCEQ's ability to regulate pollution in certain instances and federalize it.[59] The Surface Mining and Reclamation Division, which is charged with overseeing land that has been mined in order to ensure it is returned to its original state, is led by a former coal executive who has been alleged not to enforce this requirement that strongly.[60]

Texas Water Development Board Much of Texas is desert. Even the part that is not a desert is subject to periodic—and sometimes severe—droughts. According to the U.S. Drought Monitor, Texas had a drought for 271 weeks, starting on May 4, 2010 and ending on July 7, 2015. In 1957 the legislature created the Texas Water Development Board (TWDB) on order to "**lead the** state's efforts in ensuring a secure water future for Texas and its citizens."[61] Since then, Texas voters have approved numerous bonds for the TWDB to use to develop various means for ensuring access to water

This involves the creation and periodic update of the **State Water Plan**. Laws governing water in the state can be complex, however, and can sometimes work against efforts to conserve it. One has to with the rule of capture, which states that landowners have the right to pump and capture whatever water is available beneath their property, "regardless of the effects of that pumping on neighboring wells."[62] This is believed to create problems for the viability of aquifers in the state, which provide sixty-two

percent of the water it uses. An additional ongoing problem is reconciling the needs of the three groups that use the most water in the state, these are: cities, agriculture, and industry.[63] Each attempts to draw as much as they can, but doing so limits what can be collected by the others.

Texas Railroad Commission The history of the Texas Railroad Commission (TRC) is interesting. It is a relic in many ways of a time when the state was far more suspicious of large corporations than it is today. Regulation of railroads was necessary to ensure that rates were kept at a reasonable level because farmers' livelihoods depended on railroads to get their goods to market. These regulations were ensconced in the Texas Constitution. The TRC was controversial when it was created partly because of doubts about its constitutionality, as well as its potential power. In the spirit of limited government, the TRC is governed by a three-member commission, each elected in separate overlapping partisan elections for six year terms. Regardless, the need to regulate railroads became unnecessary because of the advent of highways and the ability of commerce to be moved by truck.

Given its origins in transportation, the TRC was able to preserve its existence by claiming control of the transportation of oil and gas, through the regulation of pipelines and then production. The TRC was accused of favoring large oil companies over small ones when an oil boom led to a significant drop in the price of a barrel of oil. It used the state militia to cut production in order to maintain a reasonable price. As reserves in the state increased, the TRC became the de facto oil regulator for the nation. This was facilitated by presidents beginning with Franklin Roosevelt during the Great Depression.

Regulatory

The Texas Railroad Commission just discussed is an example of a regulatory agency. There are many more in the state. The top ten regulatory agencies are: (1) Department of Insurance; (2) Department of Licensing and Regulation; (3) Public Utility Commission; (4) Texas Medical Board; (5) Texas Board of Nursing; (6) Board of Pharmacy; (7) Texas State Securities Board; (8) Texas Racing Commission; (9) Texas State Board of Medical Examiners; and (10) Board of Plumbing Examiners.

While Texas does not spend a great deal of money on regulatory agencies, the decisions they make have huge financial consequences for the industries affected by them. Battles are fought over their control. Industries that are regulated by a given agency become involved in the political process by funding campaigns in order to influence who is appointed to these agencies. Since the governor makes the appointments, the contributions generally end up in his or her campaign.

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11.5: The Relationship Between State and Local Policy in Texas

Public Policies at the State and Local Level

The United States Constitution is silent about local governments. The federal system it creates is limited to the national and state levels. The ability to create and charter local governments is considered to be one of the—unlisted —reserved powers granted to the states. They serve a vital role in the governing system since they are largely responsible for the actual implementation of the bulk of the laws passed by the states and more than a few passed by the national government as well. With the exception of cities, local governments have been created with the specific purpose of implementing state law. For that reason, state public policy is the same as the local public policy. The community college districts exist to implement the core curriculum set by the state through the Higher Education Coordinating Board. The independent school districts exist to implement K-12 education policy throughout the state. The counties exist to implement law enforcement, criminal justice, health and human services, and many other items not directly implemented by the state.

What separates the actions of state and local governments? One place to look is Section 56 of Article 3 of the Texas Constitution which details areas where the state will not interfere with local decisions. The list provides an idea of the practical issues are on the agenda of local governments. These include decisions regarding cemeteries, the locations of county seats, the legitimation of children, empaneling grand juries, and laying out roads, streets, and alleys. These are powers the state can appropriate, but only if authorized in an amendment ratified by state voters.

Another place to look is a city's code of ordinances. For example, Houston's Code of Ordinances, like other cities, has a level of detail lacking in the codes on the national or state level. That's because cities deal with the tangible problems that arise when people live in close proximity to each other. Topics in the Houston code include: animals and fowl; automobile dealers and auto wreckers; floodplain; street vendors; parking; noise and sound level regulations; solid waste and litter control; water and sewers. These might not be the most exciting policies dealt with by governments, but they may be the most tangibly important.

In recent years, the political struggle between cities in Texas—primarily the largest cities—and the state government has increased. The state government has passed laws preventing cities from banning hydraulic fracking within their city limits,[64] banning the use of plastic bags,[65] and mandating the employers provide their workers with paid sick time.[66] This creates a dilemma for the state since while it can do all of the above, the state's constitution does begin with a statement extolling the virtues of local decision-making:

> Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States.[67]

The reason for the increased conflict is easy to figure out. While the Republican Party continues to dominate statewide elected offices, and continues to control the Texas legislature, Democrats have been increasingly powerful at the local level. Both the largest cities, and the counties they are in, have shifted Democrat. In 2000, El Paso was the only large county in the state to vote Democrat. In 2008, Houston, San Antonio, Dallas, and Austin—and Harris, Bexar, Dallas, and Travis Counties—began to vote Democrat as well. In 2020, Fort Worth and Tarrant County also shifted.[68] These results guarantee additional tension.

In 2019, Texas House Speaker Dennis Bonnen was secretly recorded saying that: "Any mayor, county judge that was dumb ass enough to come meet with me, I told them with great clarity, my goal is for this to be the worst session in the history of the legislature for cities and counties."[69] The fallout from the recording—which was soon made public—led to Bonnen's resignation. The policies he hoped to implement, including forbidding local governments from using taxpayer funds to pay for lobbyists, continue to be pursued in the legislature.

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11.6: Why Public Policy? The Market and Market Failure

You might be wondering why governments are involved in any of the policies listed above? What justifies the system of, say, public education or Medicaid? Why does a government build and maintain streets, roads, bridges, and highways? This section will attempt to answer that question. It will begin with a discussion of what economists call the *marketplace,* the relationship between supply and demand, the difference between public goods and private goods, and how each impacts the desire of people to make money. After coming to an understanding of the benefits of an efficient marketplace, the concept of market failure, will be explored and how political pressures can be placed on governments to provide cures for it.

The **market** is a place where individuals can exchange goods and services. In the abstract, it describes the totality of the relationships that exist that allow for those who supply goods and services to connect with those who demand them, what is referred to in economic terms as **supply and demand**. At its simplest, the national government is set up to allow for the development and maintenance of a national market. States and local governments do the same. The previous discussion of infrastructure development illustrates part of what is necessary to allow market transactions to occur, providing the communications and transportation systems necessary to allow a market to develop and flourish. Other relevant actions on the national level include coining money and providing bankruptcy protection, a post office, patent and copyright protection, security, and a court system that allows for business disputes to be reconciled.

Ideally, these allow for buyers and sellers to meet and efficiently bargain over whatever items are at issue. Amounts to be purchased can be determined, as well as the prices of those items. The term *efficient* is important since it means that the bargain is fair to both sides of the transaction. The suppliers will be able to cover their costs of production, and the demanders will not pay too much for the product, and the product will meet at least a minimum level of quality. Other conditions should also exist. Production will not negatively affect those not involved in the transaction, and those who demand items have a reasonable certainty that their demands will be met. Someone will almost certainly exist that will want to profit by filling that demand.

But efficient markets do not always exist, and certain goods and services are difficult to provide in the standard marketplace. The term **market failure** has developed in order to describe areas where markets are not able to perform as intended. These are also areas where political pressures emerge compelling a government to become involved in a market transaction. There are four distinct types of market failure: public goods; monopolies; uneven information; and negative and positive externalities.

Public Goods The marketplace, if run ideally, allows for all needs to be efficiently met. Demand for products and services is supplied by private individuals because they receive information about what people want. People choose to provide those products and services because they can profit from doing so. There is a direct connection between the good or service provided and the compensation for the good or service. If a person does not pay for the good or service, that person does not receive it. If they are unable or unwilling to pay for the service, they will not have receive it. This leads to a problem at the root of the private sector: the assumption that if there is a demand for a certain product, someone will supply the good or service that meets the demand. That is not always the case. This is the problem with what are called **public goods**.

These includes things like public safety, paved streets, sewage systems, outdoor lighting, and anything else that meets a demand by the general public, but there is little incentive for a private person or organization to provide these because of the difficulty of making people pay for them.

Monopolies A **monopoly** exists when only one producer exists for a good or service. This means that there is no competition for it, which prevents people from being able to select similar goods and services from different producers based on costs, quality, or any other factor they choose. Without choices, costs can increase, and quality can suffer. The national government—with authorization in the Interstate Commerce Clause—specifically focuses on this by making monopolies illegal, and also being able to prevent a merger from happening if it will create a monopoly. The Texas Constitution also contains language in its Bill of Rights—Article 1, Section 26—prohibiting them: "monopolies are contrary to the genius of a free government, and shall never be allowed."[70]

There are certain goods and services, however, that don't lend themselves to competition. For example, while there is competition in the state of Texas for energy production, and consumer choice exists for oil and gas, wind, nuclear, and solar energy, there is no competition for the transmission of electricity. There is one electric grid in the state, and it is operated by ERCOT under the governance of the Texas Public Utility Commission as well as the Texas legislature.

The reason is sensible. There is little chance that competition could exist in transmitting electricity. In order to ensure that prices

and quality do not suffer, the grid is regulated. As of this writing investigations into the shutdown in February 2021, and the spike in pricing, are ongoing (**Figure 11.9**). Some of the services provided by local governments, like providing sewage for raw waste, are also examples. These are called *natural monopolies*.



Figure 11.9 Senator Charles Shwertner making a motion to suspend the rules for the Texas Senate to consider S.B. 3 to address electricity reliability following the February winter storm. SOURCE: Andrew Teas CC-BY.

Technological change can disrupt natural monopolies. This is what happened with electric service in Texas. At one point it seemed impossible for there to be competition in telephone communications nationally. There seemed no sense in stringing up multiple wires in order to allow it. But technological development not only allowed for various signals to be sent over the same wires, it also allowed for the development of cell phones. Wireless communication opened up a range of ways to communicate.

Uneven Information The phrase *buyer beware* reminds us that the producer of a good knows more about it that the consumer. This includes its true values and costs, as well as any problems associated with it. Think about what a person has to go through when that person considers whether to purchase a used car. What does that person really know about what the car has gone through? The owner would, but the owner might also has an incentive to lie about it. Doing so, however, is illegal. There are several areas where **uneven information** affects citizens. Here are a few:

- Lemon Laws: In 2001, the Texas legislature passed legislation detailing the rights of vehicle owners, which included the right to have a replacement vehicle if they purchased one that proved to be defective[71];
- Consumer Protection Laws: In 1967, the Texas legislature passed the Deceptive Trade Practice Act which made it a criminal offence to tamper with state seals on commercial items, and to engage in any deceptive advertising. This includes misrepresenting a business as “going-out-of-business”[72];
- The Veggie Libel Law: In 1995, the Texas legislature passed a civil statute called the False Disparagement of Food Products Act. It made critical comments about food products subject to a lawsuit. The act became well known in 1998 when it was the basis for a lawsuit filed a Texas beef feedlot operator against Oprah Winfrey. Winfrey won the case, but stopped speaking on the issue of food safety.[73]

Externalities –Negative and Positive Part of the efficiency promise in a market system is that all of the costs associated with the production of a good is absorbed by the consumer. But the producer has an incentive to reduce costs by putting them elsewhere. That is what is meant by the term **externality**. The classic example of a negative externality is pollution. Generally, pollution is created when a manufacturer fails to clean up the by-products associated with production. These can find their way into the land, air, and water, which imposes costs on people external to the economic transaction. Regulations in general, but environmental regulations specifically, are justified economically by the requirement that these costs be made part of the transaction between producer and consumer and not imposed on external parties. One example is the environmental fee often charged when you get your oil changed. The purpose is to pay for the costs associated with the safe disposal of the used oil. The most convenient way to dispose of it would be to dump it in an alley, or down a drain, but this creates costs down the line.

Economic impacts on external actors need not only be negative. Positive externalities can occur if a government encourages, with

tax abatements and subsidies, for example, activity beneficial to a community. If an individual is encouraged to purchase a house that is falling apart, and repair it, their activity might result in an increase in property values. Neighbors may be able to sell their homes at higher prices than they would have been able to previously. They profited from an activity that they had no involvement with.

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70. Tex. Const. art. I, § 26, https://statutes.capitol.texas.gov/D...N/htm/CN.1.htm.

71. Tex. Statutes. Title 14. Chapter 2301. Subchapter M. Section 2301.601, https://statutes.capitol.texas.gov/D.../OC.2301.htm#M.

72. Tex. Statutes. Title 2. Chapter 17. Subchapter A. Section 17.01, https://statutes.capitol.texas.gov/D.../htm/BC.17.htm.

73. Aman Betheja, "The time Oprah Winfrey beefed with the Texas cattle industry," *Texas Tribune*, Jan 10, 2018, Texas beef feedlot operator against Oprah Winfrey. Winfrey won the case, but stopped speaking on the issue of food safety.

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11.7: Conclusion

Public policy, simply put, is what governments do. It is the product of the political and governing processes. People become involved in order to influence how police interact with the public, to ensure that electricity is available when it is freezing outside, to obtain quality education for their children, to minimize traffic congestion, and all sorts of other things. If you read through a newspaper, watch a news show, or scroll through a website, chances are what you are reading concerns some aspect of public policy. If you understand public policy, and all its aspects and facets, you understand politics and government.

And while the federal system still seems complex, you should begin to grasp the roles that the different levels of government play, including the areas where their powers overlap. You should especially understand what functions state and local governments perform, and how they divide their responsibilities accordingly. You should have a basic understanding of what a market is, and why a government might choose to become involved in its transactions.

Finally, and especially, you should know and be comfortable with the specific policies Texas engages in, and how those are tied into the various agencies the legislature has created over time. Even if these don't make complete sense to you right now, they should help you process the information you receive regarding the activities of the state. The more you follow them, the more you should be able to process and understand what they do, which also gives you the knowledge necessary to an effective citizen.

Key Terms and Concepts

Affordable Care Act (ACA). A law passed in 2010 which significantly expanded access to health insurance and Medicaid.

Aid to Families with Dependent Children (AFDC). A program established by the Social Security Act of 1935 as a grant program to enable states to provide cash welfare payments for needy children who had been deprived of parental support or care.

Agency Capture. Also referred to as regulatory capture. It occurs when an executive agency which is intended to regulate an industry, is instead controlled by the industry it is to regulate. **American Federal System**. The division of governmental power into three levels with defined, though often overlapping functions. These are the national, state and local levels.

Charter Schools. An elementary or secondary school operated by a private group that has received a charter from the state authorizing it to do so. They receive state funds, and are required to follow state education law, but are granted flexibility in doing so.

Edgewood Independent School District v. Kirby. A case filed in the Texas courts arguing that the states reliance on local property taxes to help fund public schools led to a disparity in funding that violated the state constitution. The Texas Supreme Court ultimately agreed, which led to the legislature's decision to create the recapture program, also known as the Robin Hood Plan. **Externality**. A violation of the efficiencies promised by the marketplace. These are impacts – negative or positive – on individuals uninvolved in a specific transaction. Governments sometime step in to ensure that producers bear all the costs of production and pass those along to consumers.

Great Society. The name given to a series of a domestic programs during the administration of President Lyndon B. Johnson that included Medicare and Medicaid.

Higher Education Fund (HEF). A funding system established to provide consistent funding to the state universities that were not included in the Permanent University Fund. These include the Texas Tech and University of Houston Systems.

Immigration. The movement of people from one nation to another with the goal of resettlement. **Infrastructure**. The general term for the basic physical systems that facilitate transportation, communications, sewage, water, and electricity.

Iron Triangle. The relationship that develops between congressional committees, the federal bureaucracy and interest groups during policy creation and influences the formation and maintenance of public policy.

Log Rolling. The practice of exchanging favors, especially in politics by reciprocal voting for each other's proposed legislation.

Market. The systems that allow for parties to exchange goods and services. Most markets rely on sellers offering their goods or services, including labor power and financial instruments, to buyers in exchange for money.

Market Failure. The economic situation where the distribution of goods and services in the free market is inefficient. Leading causes are the existence of monopolies and the unequal availability about a given product.

Medicaid. A joint federal and state program that helps with healthcare costs for some people with limited income and resources.

Medicare. A purely federal program that obtains and redistributes funds that help with health care costs for qualified older people.

Monopoly. An example of market failure where there is only one supplier for a good and service demanded in the market. Monopolies can result in high prices for low quality products because options do not exist for consumers.

Naturalization. The process, granted to the national government, which allows a non-citizen to acquire citizenship or nationality.

New Deal. A series of programs, public work projects, financial reforms, and regulations enacted by President Franklin D. Roosevelt in the United States between 1933 and 1939. It marked a change in the relationship between the national and state governments.

Permanent University Fund (PUF). A fund established in the 19th Century creating a permanent source of funding, drawn from public land, for the Texas A&M and University of Texas systems.

Pre-approved State Textbook Selection. A controversial power granted to the State Board of Education. They establish a list of textbooks that are approved for use by public schools across

Public Goods. An additional example of market failure. These are goods that are demanded, but are such that there is no rational reason for a private entity to supply them as there is no way that people can be charged for their use.

Public Policy. Those goods and services that a government choose to provide.

Revolving Door. A movement of personnel between various roles, often around a specific area of **public policy**. These include serving as legislators, regulators, and interest groups.

Rule of Capture. A rule regarding ownership of goods beneath the ground, such as water and oil. Based in the British common law, it holds landowners who extract or “capture” groundwater, oil, or gas from a well that bottoms within the subsurface of their land acquire absolute ownership of what they draw.

San Antonio Independent School District v. Rodriguez. A case filed in federal courts by poorer school districts that argued that Texas’ reliance on locally collected property taxes violated the equal protection clause. The U.S. Supreme Court disagreed by claiming that education was not a fundamental right that was subject to the equal protection clause.

Sanctuary Cities. A term most recently used to describe local governments that refuse to implement immigration laws passed by the national government. They provide sanctuary to undocumented residents.

School Vouchers. A method of providing government funding for any school selected by students or their parents. The money that would have normally gone to a public school, follows the student to wherever they choose to go.

Social Security. A system of old age insurance established in the Social Security Act of 1935. Workers pay into a national program that then redistributes benefits based on a formula when the workers are eligible for them.

Standardized Testing. An examination that is administered across all schools in a common manner in order to attempt to evaluate the ability of schools to effectively educate their students. ***Sweatt v. Painter***. A 1950 United States Supreme Court decision that argued that the state of Texas violated the equal protection clause by denying Heman Sweat admittance to the University of Texas Law School. The attempt to abide by the separate but equal doctrine by creating the Texas Southern University Law School was insufficient.

State of Texas Assessments of Academic Readiness (STAAR). The name of the standardized tests used by Texas beginning in 2012.

Supply and Demand. The two elements that meet in the marketplace. In the ideal market, where they overlap provides efficiency in both pricing, and in the amount of a good or service provided. Inefficiencies are used to justify governmental intervention.

Temporary Assistance for Needy Families (TANF). The program which replaced AFDC in the 1990s It provides grant funds

to states families with financial assistance and related support services. States are free to limit access to the programs and require work requirements. State- administered programs may include childcare assistance, job preparation, and work assistance. **Texas Higher Education Coordinating Board (THECB)**. The agency of Texas government that oversees all public post-secondary education in the state.

Uneven information. More formally called informational asymmetries, another example of market failure. Producers of a good or service know more about its actual value than consumers. Laws are often passed ensuring that this imbalance is addressed, and that producers provide relevant information to consumers.

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12: THE CRIMINAL JUSTICE SYSTEM IN TEXAS

Learning Objectives

After reading this chapter, you should be able to:

- Explain the hierarchy of the criminal justice system.
- Outline the nature of criminal law and the different classifications of criminal offenses.
- Trace the judicial procedures associated with criminal cases.
- Describe the structure of the Texas prison and jail systems and how they have evolved.
- Assess the prospects for substantive criminal justice reform.

Approximately seventy-one percent of murders in Texas remain open, pending the discovery of new evidence—Texas has over 15,000 "cold cases."[1] Among those cases are unsolved mysteries which are "fascinating [sometimes gruesome] and bizarre real cases that continue to stump detectives and amateur sleuths[2] (**Figure 12.1**). One cold case, dubbed the "Lover's Lane Murders," took place in an undeveloped wooded area of West Houston in 1990. Cheryl Henry and her boyfriend, Andy Atkinson, had parked in a deserted spot known by young couples in the area. Law enforcement officers found the couple's car at the scene and their bodies in the woods close by. The unknown assailant raped Cheryl and then slashed her throat. Her half-buried body was recovered under a pile of wood. Authorities believe Andy was killed afterward, and his body was found bound to a tree, with severe damage to his neck. New DNA evidence was discovered linking the murder to a rape case in 2017.[3] But the investigation continues.



Figure 12.1 Cold Cases. SOURCE: *Houston Chronicle*.

Some of the most infamous unsolved cases have very unusual names including: "Texarkana Moonlight Murders" (1946) when Texas Rangers were drafted but ultimately unable to find the so-called "Phantom Killer" of five who attacked couples late at night, and the macabre "Icebox Murders" (1965) where police discovered the heads of eighty-one year old Fred Rogers and his seventy-nine year old wife, Edwina, in the vegetable bins of their refrigerator. In the "Texas Killing Fields" case the bodies of more than thirty young women and children were found in the 1970s buried along a stretch of I-45 South between Houston and Galveston. The number of bodies indicates that multiple killers have used the remote area to dispose of their victims' bodies though locals initially believed these were the victims of one serial killer. The brother of a twenty-five year old woman whose bloody body was found in her bathroom in Houston's Orchard Apartments ("Orchard Apartment Murders") over forty years ago but whose killer was never identified said, "Each year, it gets rougher knowing someone is out there, getting away with it. . . . You just can't let something like that go."[4]

Recognizing the "cold case crisis," the Texas legislature created a Texas Ranger Unsolved Crimes Investigation Program in

2001.[5] In 2018, Texas Ranger James Holland brought the convicted killer, Samuel Little, back to Texas. At seventy-eight, he admitted responsibility for ninety-three unsolved murder cases.[6] For the survivors of these homicide victims, there is no full closure until these crimes are solved. Solving these—and many other similar forgotten cases—remain at the forefront of this specialized investigator group of Texas Rangers. Police reformer James Adcock, president of Mid-South Cold Case Initiative, says given the backlog it's not enough. He argues police departments could improve results by shifting funding to detectives, training, and forensic testing, and embracing innovations like "publishing data online on unsolved cases to seek tips, hiring civilians to handle administrative duties, and creating or expanding cold case task forces to include retired officers, professors, or other hand-selected volunteers."[7]

Perhaps you will one day become a part of the process that brings justice to those who commit crimes and relief to their victims and their families. Why not consider a career in law enforcement investigation, in law as a prosecutor, or even as a judge who presides over such cases. If you pursue another, unrelated, career path, there is still a good chance that you may participate in the legal system at least once during your life, either as a witness or a juror in a criminal case. If so, perhaps you will be part of history when any of these or other similar cases are resolved after many years of remaining dormant.

12.1: Sources and Hierarchy of Law

12.2: Criminal Law, Justice, and Offenses

12.3: Texas Criminal Justice Process

12.4: Crime and Criminal Defense

12.5: Civil Liberties- Protecting the Rights of the Criminally Accused

12.6: The Texas Correctional System

12.7: Recent Reforms of the Texas Criminal Justice System

12.8: Prospects for Future Criminal Justice Reform

12.9: Conclusion

12.10: Critical Thinking Questions

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1. Thomas Hargrove, "Cold Case Homicide Statistics – Breakdown of Homicide Clearance Rates," Project: Cold Case (2019).
2. Web Infoguy, "Unsolved Mysteries: Famous Murders that Remain Unsolved," Unspeakable Times Ranker, upd. Oct.19, 2020, https://www.ranker.com/list/famous- unsolved-murder-cases/web-infoguy.
3. Shern-Min Chow, "Missing Pieces: Police Using New Technology to Help Solve 'Lovers Lane Murders,'" KHOU 11, Nov. 17, 2017, https://www.khou.com/article/news/in.../285-492796954.
4. Sadie Gurman,"Murder Victim Mary Michael Calcutta's Family 'Just Can't Let Go,' Even after 30 Years," *Pittsburgh Post-Gazette*, Aug. 19, 2009, https://www.post-gazette.com/neighbo...s/200908170197.
5. Lise Olsen, "Undetected," *Texas Observer*, Feb. 8, 2021, https://www.texasobserver.org/undetected/.
6. Olsen, "Undetected," https://www.texasobserver.org/undetected/.
7. Olsen, "Undetected," https://www.texasobserver.org/undetected/.

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12.1: Sources and Hierarchy of Law

Sources of Law

The Texas Penal Code and Texas Code of Criminal Procedure are the primarily laws that govern criminal law in Texas. The Texas **Penal Code**[8] is the principal criminal code of the state. The Texas Penal Code and its companion, the Texas Code of Criminal Procedure, were originally enacted in 1856, after the Texas legislature passed an act requiring the Texas governor to appoint a commission to codify the civil and criminal laws of Texas. Prior to that year, criminal law in Texas was governed mostly by common law. More than 100 years later, in 1973, the Penal Code underwent a major reorganization and reconciliation to consolidate, simplify, and clarify the substantive law of crimes in the state. It specifically identifies and describes all significantly harmful criminal conduct, grades criminal offenses according to the harm they cause or threaten, distributes the sentencing authority between the court system and the correctional system.

The Penal Code is organized into titles (and subdivided into multiple chapters) addressing the following specific issues and topics: general principles of criminal responsibility (often called culpability); justifications for committing criminal conduct; punishments for all misdemeanors and felonies; personal offenses against other individuals (e.g., homicide, kidnapping, assaults, and various sexual offenses); offenses against property (e.g., arson, robbery, burglary, shoplifting, fraud, and theft); offenses against public administration (e.g., bribery, perjury, and abuse of office); offenses against public order and decency; offenses against public health, safety, and morals (such as gambling, weapons, and public intoxication); and organized crime.[9]

The Texas Code of Criminal Procedure, on the other hand, addresses a number of administrative issues relating to the criminal justice process. Those issues include, among others: a lengthy discussion of the rights of the accused; courts and criminal court jurisdiction; wiretaps and the capture of electronic communication; habeas corpus (a court order in which the judge demands a law enforcement agency to produce a detainee for a court hearing to determine whether a prosecutors can demonstrate a valid reason for detaining the person); crime victim compensation; and the expunctions of criminal records.[10]

Hierarchy of Law

In the United States, laws are enacted, interpreted, and enforced at the federal, state, and local level. All three levels contain some form of constitution, laws enacted by a legislative body, and rules promulgated by bureaucratic agencies, panels, boards, and commissions. While both the federal and state governments have constitutions, Texas cities and towns are governed by a comparable document—a municipal (or city) charter—the basic document that defines the organization, powers, functions and essential procedures of the city government.[11]

As a general rule, a hierarchy exists, such that a constitution (or charter), law, or rule may not contradict a higher constitution, law, or rule. The hierarchy of law used in the Texas criminal justice is relatively simple:

- U.S. Constitution;
- laws (statutes) enacted by Congress;
- rules promulgated by federal agencies;
- state constitution;
- laws enacted by the state legislature;
- rules promulgated by state agencies;
- city/county charters (the “constitution” for the city or county);
- local laws and ordinances;
- rules promulgated by local agencies.

The hierarchy of law is enshrined by the **Supremacy Clause** of the U.S. Constitution (Article 6, Clause 2):

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.[12]

This hierarchy of law means that the rights guaranteed by the U.S. Constitution, as interpreted by the U.S. Supreme Court, and the laws passed by the U.S. Congress, will take precedence when in conflict with state law or local law.

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8. Tex. Pen. Code (2019), FindLaw., https://codes.findlaw.com/tx/penal-code/.

9. Tex. Pen. Code (2019), Texas Constitution and Statutes,

https://statutes.capitol.texas.gov/?...5.00.000021.00.

10. Tex. Code Crim. Proc. Ann, arts. 4-67 (West 2019).

11. Coon, James A., "Revising City Charters in New York State, Local Government Technical Series." Albany, NY: New York State Department of State Division of Local Government Services, June 1998.

12. United States Const., art. VI, cl.2.

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12.2: Criminal Law, Justice, and Offenses

Criminal law, as distinguished from civil law, is a system of laws concerned with punishment of individuals who commit crimes. Thus, where in a civil case two individuals dispute their rights, a criminal prosecution involves the government deciding whether to punish an individual for either an act or an omission."[13] Because criminal law is concerned with actions that are dangerous or harmful to society as a whole, prosecution is pursued not by an individual or business entity (as is typically the case in civil cases, discussed in chapter 8 on the Texas court system) but by the state. The purpose of criminal law is to: (1) provide the specific definition of what constitutes a crime; and (2) prescribe punishments for committing such a crime. No criminal law can be valid unless it includes both of these factors.

Criminal justice is then primarily concerned with the enforcement of criminal law. In Texas, the criminal justice system is a series of government agencies and institutions whose goals are to identify and catch unlawful individuals to inflict a form of punishment on them. The manner in which the state's criminal justice system, which focuses more on punishment and rehabilitation, operates mirrors the sentiments of most of its residents. Texas political culture favors a swift and stern punishment for offenses against the law, especially in the areas of violent crime. But sometimes, the wheels of justice turn slowly and may even seem to stop for years.

There are two types of criminal offenses: misdemeanors and felonies. A **misdemeanor** is considered minor crime, and a **felony** is defined as major, more serious crime. Misdemeanors and felonies are each classified, according to the relative seriousness of the offense, into three and five categories, respectively (**Table 12.1**).

Offense	Punishment	Court
Capital Murder (Capital Felony) *Examples*: Murder of a law enforcement official, prison guard, or firefighter on duty; commits murder with other types of felonies; murder for hire; mass murder; murder of someone under the age of ten	Life without parole or death penalty	District Court
First-degree Felony *Examples*: Murder; theft of property worth over $200,000	Five to ninety-nine years in prison, and possible maximum fine of $10,000	District Court
Second-degree Felony *Examples*: Manslaughter; theft of property worth between $100,000-200,000	Two to twenty years in prison, and possible maximum fine of $10,000	District Court
Third-degree Felony *Examples*: Impersonating someone online; theft of property worth $20,000-100,000	Two to ten years in prison, and possible maximum fine of $10,000	District Court

State Jail Felony *Examples*: Possession of 4 ounces to 1lb of marijuana; theft of property worth $15,000-20,000	180 days to two years in prison, and possible maximum fine of $10,000	District Court
Class A Misdemeanor *Examples*: Resisting arrests; theft of property worth $500-1,500	maximum of one year in prison, and/or maximum fine of $4,000	County Court
Class B Misdemeanor *Examples*: Terroristic threat; theft of property worth $20-500	maximum of 180 days in prison, and/or maximum fine of $2,000	County Court
Class C Misdemeanor *Examples*: Sexting with someone 17 or younger; theft of property worth less than $20; a person under the age of 21 purchases, attempts to purchase, or in possession of alcohol	maximum fine $500	Justice of the Peace or Municipal Courts

Table 12.1. Classifications of Criminal Offenses in Texas, from Most Serious to Least Serious SOURCE: Tex. Pen. Code (2019).

In Texas, charges for crimes and their punishments can vary widely, depending on the nature of the crime, history of the defendant, and other circumstances of the case. But sentencing for a crime in Texas is based on which category or into which level the offense falls. The crimes mentioned above are classified in Texas by level and type because Texas has adopted the system of what is known as determinate sentencing, meaning that that sentencing guidelines—the set of standards that are generally put in place to establish rational and consistent sentencing practices within a particular jurisdiction—help determine what punishment should be assigned for a particular crime.[14]

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13. Texas Department of Criminal Justice, "Texas Board of Criminal Justice" (2019), https://www.tdcj.texas.gov/tbcj/index.html.
14. Neil Davis, "Texas Crimes by Class and Punishments: How does Texas Classify Crimes and What are the Sentencing Guidelines for Felonies and Misdemeanors," Neil Davis Law Firm, https://www.nealdavislaw.com/crimina...nishments.html.

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12.3: Texas Criminal Justice Process

The Texas court system must account for and address two conflicting goals: the need to protect the health, welfare and safety of the state's people and the requirements to protect the rights and liberties of the accused. The state's criminal justice system incorporates an intentional bias in favor of the accused. In addition, the state must ensure that every person is treated equally in legal matters. This fair treatment through the normal judicial system, a general right to which each citizen is entitled, is known as *due process*. The procedural steps in the Texas criminal justice process have been thoroughly discussed in chapter 8 addressing the Texas court system:

- crime investigation;
- arrest;
- prosecutorial review;
- formal complaint;
- grand jury and indictment;
- arraignment;
- discovery;
- pretrial matters;
- trial and sentencing;
- appeals.

This section will focus on policing, trials, and post-trial remedies.

Policing Police investigations play an integral role in the criminal justice system. The primary mechanisms used by law enforcement officials when investigating crimes are interviews of potential eyewitnesses, custodial interrogations of suspects, recorded observations, and collecting and preserving physical and forensic evidence at the crime scene. Their importance, however, does not mean that they and their tactics are infallible. Law enforcement officers can and do make mistakes, and those mistakes can jeopardize the successful prosecution of a case or, on fewer occasions, result in the possible incarceration of an improperly accused individual. For these reasons, police officers should follow constitutional, statutory, and regulatory guidelines when they investigate crimes.[15]

If there is insufficient evidence against a specific individual, the case may be quickly closed. If the alleged perpetrator is identified and there is sufficient evidence to justify an arrest, law enforcement officials may arrest the accused before involvement of any prosecutor or court. This often occurs when it is determined that the arrest is necessarily to protect the health, safety and welfare of the public. In other cases, when the defendant is not already in jail, law enforcement officials must rely on prosecutors to procure arrest warrants. In many cases, this type of arrest is based upon probable cause—the reasonable belief that a crime has been committed or is about to be committed. This process is governed by Title 1, Chapter 15 of the Texas Code of Criminal Procedure.[16]

In such cases, law enforcement officials complete a sworn affidavit about the facts they have gathered in conjunction with their investigation. That affidavit serves as the basis for a prosecutor's argument to a judge that an arrest warrant should be issued. An arrest warrant is a written order from a judge directed to a peace officer or some other person specially named to take an individual into custody. The arrest warrant is executive when the alleged perpetrator is arrested.

If an accused it not yet arrested by law enforcement officials, once the investigation is substantially completed, those officials will present the case to the County Attorney or District Attorney, depending on the severity of the offense alleged. These attorneys determine whether there is enough evidence to charge the suspect with an offense, and if so, what type of offense. They also review the case and determine if there is enough evidence to proceed to court look for possible legal problems that may affect the case. These attorneys may also request additional investigation or information if they believe the potential case is questionable.

A complaint is a document that officially charges a person with a crime. It must be sworn to by someone with knowledge of the crime. If there is sufficient evidence, and the law supports a criminal case, the suspect may be charged with a crime by a legal document called an *information*. An **information** is a formal charging document that describes the criminal charges against a person and the factual basis for those charges that does not require a grand jury's vote.[17] The prosecutor may file an information and obtain an arrest warrant from a court for the accused if that individual has not already been arrested. An information is often the charging document used by prosecutors in misdemeanor cases.

In more serious cases, felonies, the legal document that sets out exactly what the defendant is charged with is called an **indictment**. If an indictment is returned by a **grand jury**, it will serve as the legal basis upon which the person accused of a crime will be arrested. This is not the trial but a hearing to determine if there is enough evidence to arrest a suspect and proceed to a trial. Grand juries are provided for in Article 1, Section 10 of the Texas Constitution.

Next, a criminal defendant is advised of the charges in a post-arrest court proceeding called an **arraignment** and is asked to enter a plea to the charges. If the defendant or is financially incapable of employing an attorney, a court will appoint an attorney to represent the defendant.

Bail is often resolved at the arraignment. **Bail** is the amount of money that the defendant will forfeit if he or she fails to show up for their trial. he availability of bail is typically determined according to laws passed by the Texas legislature. Those laws are found in Title I, Chapter 17 of the Texas Code of Criminal Procedure. However, the judge may also take into consideration the seriousness of the offense, the defendant's ability to make the bond, the safety of the victim, and the safety of the witnesses. Bail can be tremendously expensive, especially for those who lack substantial or any income. Federal courts have consistently held that the Eighth Amendment prohibits “excessive bail” that unnecessarily keeps defendants in jail before trial.[18] Harris County intervened in 2016, alleging that several individuals charged with low-level offenses remained jailed because they could not afford to pay for their release. The following year, a federal judge declared this practice unconstitutional. Harris established a new policy of “automatic, no-cash pretrial release for about eighty-five percent of low-level defendants. It also added additional legal and social services for poor arrestees and help for getting them to their court dates.”[19] Governor Abbott has asked the Texas legislature to look at reversing some of the Harris County changes in 2001.[20]

Trials

At a pretrial hearing between the judge and attorneys, the judge will rule on what will be admitted as evidence. Unless a **plea bargain** is reached—any agreement whereby the defendant agrees to plead guilty or *nolo contendere* (no contest) to a particular charge in return for some concession from the prosecutor—the case proceeds to trial.

Once a case goes to court, the prosecution bears the burden of proving the defendant’s guilt **beyond a reasonable doubt**. The defendant does not have to prove his or her innocence.
The trial may be in front of a jury or a judge. A jury is required when the defendant’s punishment, if convicted, could include incarceration or the death penalty. Otherwise, a defendant can waive the right to a jury trial and request a **bench trial,** a trial in front of a judge rather than a jury. If the defendant is found "guilty," a conviction occurs, and the jury proceeds to the punishment phase of the trial. If not, the defendant is declared "not guilty" and is free.

Criminal trials in Texas are divided into separate parts, one part focuses on the judgment of guilt or innocence, and the other part focuses on sentencing. In the state, if the jury finds the defendant guilty, the next step is sentencing. The jury, not the judge, determines the punishment, and juries are somewhat restricted during this phase since the punishment ranges for both misdemeanor and felony criminal cases in Texas are set forth in Title 3, Chapter 12 of the Texas Penal Code.[23] Table 12.1 earlier in this chapter lists the punishments associated with various crimes.

Every convicted defendant has the right to appeal.

Post-Trial Remedies

Every defendant who is sentenced to a term in prison will, at some time, become eligible for release before serving all of the sentence, except those who receive life imprisonment without the possibility of parole. As with appeals, this area of the law is very complicated. Generally, the law provides that a person convicted of a more serious crime will spend a greater portion of his or her sentence in prison. The most serious crimes are called *3g Offenses* because they are listed in Section 3g of the Texas Code of Criminal Procedure. In those cases, convicts usually serve thirty-five to forty years. For non-3g offenses, a convicted offender “become parole-eligible when he or she has served *actual calendar time* plus *good conduct time* equaling twenty-five percent of the sentence or fifteen years (the lesser of the two).”[24]

Once a convict becomes eligible for parole, he or she has the right to participate in any parole proceeding involving his or her case, including appearing in person before a member of the parole board. The Board of Pardons and Paroles decides which eligible offenders to release on parole or discretionary mandatory supervision, and under what conditions. The Board uses guidelines to weight each offender's likelihood of a successful parole against the risk to society that he released inmate

may impose.[25] The Parole Board also decides whether to revoke parole if conditions are not met, using a graduated sanctions approach. Depending on the seriousness of the violation, the Parole Board may continue parole, impose additional conditions, place the offender in an Intermediate Sanction Facility, or use other alternatives to seeking a revocation of the defendant's parole and sending the offender back to prison. Additionally, the board recommends clemency matters, including pardons, to the governor.

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12.4: Crime and Criminal Defense

The Sixth Amendment to the U.S. Constitution guarantees criminal defendants the right to an attorney, and that attorney must provide "effective assistance of counsel."[26] This is true regardless of the financial status of the defendant. This right to effective assistance has two aspects. First, the attorney must have the unrestricted ability to exercise his or her duties in order to appropriately and vigorously represent a client. Second, a defense counsel should do nothing to deprive his or her client of effective assistance of counsel by failing to provide competent representation that is adequate to ensure a fair trial and a just outcome.[27] People accused of crimes can be represented in five possible ways.

Self-Representation

Defendants may represent themselves when a judge determines that they are competent to do so. Judges and lawyers refer to defendants who represent themselves with the terms *pro se* defendants since the terms originates from a Latin phrase meaning “for one’s own person.” To determine competence, the judge often weighs factors such as the defendant’s age, level of education, familiarity with English, and the seriousness of the crime with which the defendant is charged.

Pro Bono Representation

Pro bono publico (English: "for the public good"; usually shortened to *pro bono*) is a Latin phrase for professional work undertaken voluntarily and without payment. Unlike traditional volunteering, it uses the specific skills of professionals to provide services to those who are unable to afford them.[28] Typically, there is no right to a free lawyer in non-criminal (or “civil”) cases. However, there are many legal aid and *pro bono* programs that provide free legal help for the poor in these situations. These programs typically help people with very low income (those whose income is less than 125 percent of the federal poverty level), but sometimes they will help those with slightly higher income levels. These programs also help those who are elderly and disabled.[29]

Alternatively, attorneys throughout the country and state are strongly encouraged to contribute hours of service to *pro bono* programs or to financially contribute to organizations that provide legal services to the poor and underserved. Because most *pro bono* programs are dramatically underfunded, clients are often chosen on the likelihood that cases will succeed. For this reason, many prospective clients’ cases are not seriously considered.[30]

Retained Counsel

Criminal defendants may retain a private criminal defense lawyer to represent them if they are financially able. In these situations, a lump sum of money paid to a lawyer to secure his or her services and to cover legal fees and other future expenses of a legal action (referred to as a *retainer fee*). On occasion, a defendant will be required to provider a retainer fee before the parties sign a retainer agreement.

The use of an attorney or lawyer provides numerous benefits to any criminal defendant.

- It prompts greater cooperation and negotiations with a prosecutor, who often decline to deal with defendants who represent themselves.
- It allows a defendant to possibly enter a diversionary program before trial (which is sometimes offered to defendants who have committed minor offenses or may be first- time offenders) as an alternative remedy instead of participating in a normal criminal case process.
- It provides defendants with a comprehensive and objective view of the potential fallout and other aspects of their criminal charges and pending cases.
- It provides the defendant with the legal expertise of an attorney who may have substantial criminal law experience, including the attorney’s full understanding and interpretation of the law and his or her strategy relating to the development and implementation of defenses based on the lawyer’s legal experience and research.
- It fully informs the defendant of the consequences of a guilty plea, including possibility civil liability arising from the criminal case, loss of future income earning ability, and other negative, post-process effects upon those who have been criminally convicted.

- Objectively present expert witnesses, contradicting statements made by prosecution witnesses, and even independently interview eyewitnesses and victims.[31]

However, retaining a private attorney can be quite costly. Hourly fees are by far the most common type of fee arrangement utilized by criminal defense attorneys. Hourly billing rates can range from $150 to $700 per hour. For even the most routine case, legal costs could easily exceed thousands of dollars.[32]

Court-Appointed Attorney

In 1963, the U.S. Supreme Court ruled in *Gideon v. Wainwright* that criminal defendants who might be sent to prison if convicted are entitled to legal representation even if they cannot afford to hire an attorney.[33] Most of that representation in Texas is provided by **court-appointed attorneys**. In 2019, there were approximately 474,000 indigent defendants in the state. Texas counties are responsible for the costs of appointed counsel for most of these indigent defendants. Counties are authorized to deliver indigent defense services through a system that best meets local needs. Providing court appointed counsel for indigent defendants is a major uncontrollable expense in county budgets. Since 2001, indigent defense costs have increased 228 percent from $91.4 million in 2001 to $299.9 million in 2019. In fiscal year 2019, the state funded only about $28.5 million of the total statewide indigent defense costs, while counties contributed approximately $271.4 million (about ninety percent of the total costs).[34]

With most court appointments, a judge will appoint a private lawyer to represent an indigent person accused of a crime. However, the court is only required to appoint an attorney at public expense when the defendant, if convicted, can be sentenced to incarceration and the defendant is unable to afford his or her own attorney. Even when an attorney is court-appointed, there is no guarantee that legal services will be completely free. Some courts use a sliding scale – based upon the defendant's income—to determine a sum which the judge believes the defendant is capable of paying and to order a defendant's repayment of some of the costs of an appointed attorney. Attorneys are often appointed as a reward for providing good representation of their previous clients. For example, attorneys may be appointed to represent clients in serious felony cases if they have demonstrated a historical track record of competent trial or negotiating work on behalf of their clients.

In response to its discovery that low-income defendants in some parts of Texas were remaining in jail for lengthy periods of time before obtaining a court-appointed attorney and learning that some of those attorneys were not professional competent to handle these types of cases, the Texas legislature passed the Fair Defense Act of 2001 (FDA). The act changed when and how lawyers are appointed to represent indigent defendants in the state. The act required all criminal courts in Texas to adopt and implement procedures for providing appointed lawyers to indigent defendants.[35]

Public Defender

Public defenders are among the options available to a small percentage of the state's poorest defendants. A **public defender** is an attorney appointed by the court. However, this individual is different than the court-appointed attorneys mentioned above. Public defenders are full-time attorneys employed by the state or federal governments—not private attorneys—to represent and advise those who cannot afford to hire a private, retained attorney. In conjunction with the FDA, greater attention has been given to improving the quality of indigent defense services while also containing costs. The use of public defender systems is increasingly being considered as a strategy to meet these dual objectives. Prior to the FDA, only five Texas counties operated public defender offices serving adult defendants. These included Colorado, Dallas, El Paso, Webb, and Wichita Counties.[36] Since the passage of the Act, that number has risen to nineteen public defender's offices, which thirty-nine counties rely on in some capacity.[37]

These newest public defender offices are not sufficiently established to generate evidence of their cost-effectiveness.[38] In addition, this system is not without critics beyond the criminal justice system. Opponents of the current public defender system contend that offenders often do not receive proper representation because public defenders have too many cases to be able to perform investigations and conduct their own discovery in cases. In addition, defendants claim that they do not have sufficient communication with those representing them and that they are pressured by their public defender into a plea agreement to resolve their case.[39]

In addition, public defenders are express grave reservations about the quality and quantity of representation provided by system in which they work. For example, they argue that public defender systems are plagued by underfunding and excessive caseloads.

Even though funding for indigent defense systems vary by state, it is undisputed that public defender systems are funded with far less money than is needed. This underfunding prevents defense attorneys from conducting what they call the “core functions” of their jobs. The predictable result, some claim, of excessive caseloads and a lack of resources is that ninety-five percent of criminal cases in which public defenders are involved end in a plea bargain. Those within the profession acknowledge the existence of this “meet ‘em and plead ‘em” system of justice, in which clients may have little more than a brief conversation in the courtroom with a public defender before entering a guilty plea.[40]

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12.5: Civil Liberties- Protecting the Rights of the Criminally Accused

In addition to protecting the personal freedoms of individuals, the Bill of Rights protects those suspected or accused of crimes from various forms of unfair or unjust treatment. The prominence of these protections in the Bill of Rights should not be surprising. Given the colonists' experience of what they believed to be unjust rule by British authorities, however, and the use of the legal system to punish rebels and their sympathizers for political offenses, the impetus to ensure fair, just, and impartial treatment to everyone accused of a crime—no matter how unpopular—is completely understandable. Even today, one must always consider the fact that constitutionally protected **civil liberties** are intended to protect individuals accused of crimes from improper government conduct. At every stage of the legal process, the Bill of Rights incorporates protections for these people.

The Fourth Amendment and Investigations

The Fourth Amendment largely pertain to investigations conducted before someone has been charged with a crime. In general, this amendment protects people from unreasonable searches and seizures by government officials and sets requirements for issuing search warrants of a person and his or her home, car, business, or school. The Fourth Amendment, however, is not a guarantee against all searches and seizures, but only those that are deemed unreasonable under the law. Whether a particular type of search is considered reasonable in the eyes of the law, is determined by balancing two important interests. On one side of the scale is the intrusion on an individual's Fourth Amendment rights. On the other side of the scale are legitimate government interests, such as public safety.[41]

The extent to which an individual is protected by the Fourth Amendment depends, in part, on the location of the search or seizure.[42] When evidence is obtained either through the improper acquisition or execution of a warrant, any evidence obtained through the use of that warrant may be excluded and held inadmissible at a criminal trial.[43]

The Fifth Amendment and Police and Defense Procedures

Many of the provisions dealing with the rights of the accused are included in the Fifth Amendment. As a result, it is one of the longest in the Bill of Rights. The clauses incorporated within the Fifth Amendment outline basic constitutional limits on police procedure, some of which are derived from protections once afford by the Magna Carta, a document guaranteeing English political liberties. This amendment provides for five distinct constitutional rights: the right to indictment by the grand jury before any felony criminal charges are formally brought against the defendant; the prohibition of **double jeopardy** (a procedural defense that prevents an accused person from being tried again on the same (or similar) charges following a valid acquittal or conviction in the same jurisdiction); the right against forced self-incrimination; the guarantee that all criminal defendants have a fair trial; and the guarantee that governments cannot seize private property—through the process called *eminent domain* (**Figure 12.2**)—without giving the owner full and adequate compensation at the market value of the property.[44]



Figure 12.2 The Corpus Christi 13th Texas Court of Appeals ruled that the planned high-speed train project running from Dallas to Houston can exercise the power of eminent domain because it qualifies as a railroad under Texas law. SOURCE: Kim Roberts, "Texas Appellate Court Allows Eminent Domain for High-Speed Rail Project," *The Texan* (May 22, 2020).

The Sixth Amendment and Criminal Trials

The Sixth Amendment was drafted by the those who were very familiar with a long list of government abuses—punishment, torture, and execution of British subjects—at the hands of the English monarch. Certainly, some of these abuses related to the improper accusation of criminal offenses and the assessment of unfair punishments. Because none of protections afforded by the Sixth Amendment were guaranteed to British citizens, these protections became priorities when the Bill of Rights was proposed and subsequently ratified.[45]

The Sixth Amendment contains the provisions that govern criminal trials: the right to have a speedy, public trial by an impartial jury (which protects people from being detained indefinitely by the government); the right to be informed of the nature of the crime with which the defendant is being charged (usually during an arraignment); the right to confront and cross-examine witnesses brought on behalf of the prosecution; the right to secure subpoenas (written orders requiring a person to attend a court) to ensure the presence and obtain the testimony of witnesses in the defendant's favor; and the right to have the effective assistance of counsel, which is previously discussed in this chapter. One additional note regarding the right to counsel is necessary here. Historically, many states did not provide attorneys to those accused of most crimes who could not afford one themselves. Even when an attorney was provided, his or her assistance was often inadequate at best. This situation changed as a result of the Supreme Court's decision in *Gideon v. Wainwright* (1963), a case in the Supreme Court's decision holding that the Sixth Amendment's guarantee of a right to assistance of counsel applies to criminal defendants in both federal and state courts.[46]

The Eighth Amendment and Limitations on Penalties

The Eighth Amendment prohibits the federal government from imposing excessive bail, excessive fines, and cruel and unusual punishments. The Amendment serves as a limitation upon the federal government to impose unduly harsh penalties on criminal defendants before and after a conviction.[47] The phrases in this amendment originated in the English Bill of Rights of 1689, which outlined specific constitutional and civil rights and ultimately gave Parliament power over the monarchy. Among these rights was the prohibition against cruel and unusual punishments at a time when one such punishment included drawing and quartering.

As previously mentioned, judges ordinarily set a bail amount at a suspect's first court appearance after an arrest, which may be either a bail hearing or an arraignment. Judges normally follow standard practices setting lower bail for petty, nonviolent offenses and higher (or no) bail for those who have committed more serious crimes. Judges can raise or lower the bail or waive bail altogether and grant release on the defendant's personal recognizance (P.R.) based on the circumstances of an individual case.[48] Factors that influence the allowance and amount of bail include the amount of evidence against a defendant, the defendant's

criminal history, the defendant's risk to the community, whether the defendant is a flight risk (e.g., whether the defendant is like to skip post-arrest trial proceedings), and the severity of the offense with which the defendant is charged.[49]

It is rare for bail to be successfully challenged for being excessive. The Supreme Court has defined an excessive fine as one "so grossly excessive as to amount to deprivation of property without due process of law" or "grossly disproportional to the gravity of a defendant's offense."[50] Similarly, the courts rarely strike down a fine as excessive unless it is grossly disproportionate to the gravity of the offense that it was designed to punish.[51] The most

controversial provision of the Eighth Amendment is the ban on "cruel and unusual punishments."[52] Various torturous forms of execution common in the past—drawing and quartering, burning people alive, and the like—are prohibited by this provision.[53]

Undoubtedly, the most vigorous and decisive discussions about the issue of cruel and unusual punishment relate to whether to administer the death penalty and, if so, the manner in which the death penalty is administered. The death penalty's existence can be traced to the beginning of the American colonies. Since then, and certainly in more recent years, the Supreme has addressed a number of cases specifically addressing the following issues:

- death penalty statutes must allow consideration of mitigating evidence in addition to the circumstances of the offense in determining whether a defendant should be sentenced to death, *Lockett v. Ohio* 438 U.S. 536 (1978);
- death sentences for individuals who did not intend to kill the victim violate the Eighth Amendment, *Enmund v. Florida* 458 U.S. 782 (1982);
- Eighth Amendment prohibits the execution of a person who is insane and not aware of his execution or the reasons for it, *Ford v. Wainwright* 577 U.S. 389 (1986);
- execution of a person with "mental retardation" violates the Eighth Amendment, *Atkins v. Virginia* 536 U.S. 304 (2002);
- Constitution prohibits the execution of individuals who were under eighteen at the time of the offense, *Roper v. Simmons* 543, U.S. 551 (2005); and
- state's three-drug protocol for carrying out lethal injections does not amount to cruel and unusual punishment under the Eighth Amendment, *Baze v. Rees* 553 U.S. 35 (2008).[54]

Twenty-eight states, American Samoa, the federal government, and the military use the death penalty. Five methods of execution are used by those states: lethal injection, gas chamber, firing squad, electrocution, and hanging. Of those methods, Texas has used hanging, electrocution, and—in 1977—legal injection. Recent controversies over lethal injections and firing squads to administer the death penalty suggest the topic is still very important. While the Supreme Court has never established a definitive test for what constitutes a cruel and unusual punishment, it has generally allowed most penalties short of death for adults, even when to outside observers the punishment might be reasonably seen as disproportionate or excessive. Perhaps the most notorious example, *Harmelin v. Michigan*, 501 U.S. 957 (1991), upheld a life sentence in a case in which the defendant was convicted of possessing just over one pound of cocaine with no other accompanying crime.

In 1982, Texas became the first jurisdiction in the world to carry out an execution by lethal injection. As of mid-year 2020, Texas has executed 570 offenders, more than a third of the national total. In the midst of this unprecedented period in Texas, seven additional states have abolished capital punishment since 2007. It appears that, even in Texas, the public mood may have shifted somewhat against the death penalty. Since 1998, Texans have voiced the following sentiments:

- overwhelming acknowledgment that people are wrongfully convicted and executed for capital crimes
- support for the death penalty, but less support when life imprisonment (LWOP) without the possibility of parole is a jury option
- majority belief that the death penalty is applied fairly if LWOP is an option considered by juries
- support for moratoriums, greater deterrence, more vigorous DNA testing, and emphasis on rehabilitation rather than punishment
- grave concerns about racial disparities in the administration of the death penalty and execution of the mentally retarded.[55]

The death penalty has been imposed less frequently since 2005 when Texas allowed juries to sentence a defendant to life without parole for capital murder cases.

Fourteenth Amendment and Due Process

As early as 1833, federal courts rules that the amendments in the Bill of Rights originally only applied to federal government action

and, therefore, did not apply to the states. It was not until the 1920s that the Supreme Court gradually applied selected elements of the first ten amendments to the states through the **Due Process Clause** of the Fourteenth Amendment. This process is known as **selective incorporation**. In other words, selective incorporation makes parts of the first ten amendments to the Constitution binding on the states, and state governments largely are held to the same standards as the federal government with regard to many constitutional rights.[56] In addition, no less than ten of the thirty-one sections in the state constitutions bill of rights relate directly to the guarantees addressed in Article 4, 5, 6 and 8 of the federal Bill of Rights.

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12.6: The Texas Correctional System

Before a central state penitentiary was established in Texas, local jails housed convicted felons. The Congress of the Republic of Texas defeated bills for a penal institution in both 1840 and 1842; in May 1846 the First Legislature of the new state passed a penitentiary act, but the Mexican-American War prevented implementation of the law. Before a central state penitentiary was established in Texas, local jails housed convicted felons. The Congress of the Republic of Texas defeated bills for a penal institution in both 1840 and 1842; in May 1846 the First Legislature of the new state passed a penitentiary act, but the Mexican-American
War prevented implementation of the law. On March 13, 1848, the legislature passed the act that began the Texas penitentiary. The law authorized gubernatorial appointment of three commissioners to locate a site and choose a superintendent and three directors to manage the treatment of convicts and administration of the penitentiaries.

After the commissioners selected Huntsville, in Walker County, for the site, construction began on August 5, 1848, and continued for several years (**Figure 12.3**). Abner H. Cook supervised the construction and was the first superintendent of the prison. On October 1, 1849, the first prisoner, a convicted horse thief from Fayette County, entered the partially completed Texas State Penitentiary at Huntsville. The law authorized gubernatorial appointment of three commissioners to locate a site and choose a superintendent and three directors to manage the institution. Today, the state operates the largest prison system in the United States.[57]



Figure 12.3 The Texas State Penitentiary at Huntsville's yard, between circa 1873 and circa 1875. SOURCE: Image credit: public domain.

Texas's criminal justice system has three components. Those three stages consist of law enforcement and criminal prosecution, trial and appeals, and corrections.[58] Each of these stages is comprised of multiple levels, organizations and many thousands of personnel. The nine member Texas Board of Criminal Justice is appointed by the governor to oversee the Texas Department of Criminal Justice (TDCJ, which includes the massive task of overseeing corrections, including 8confinement, supervision, rehabilitation, and reintegration of the state's convicted felons. The board is a separate agency from—but works closely with—the TDCJ. The board members, who are appointed for staggered, six-year terms, are responsible for hiring the executive director of the department and setting rules and policies which guide the agency.[59] The department encompasses these major divisions:

- Correctional Institutions Division
- Parole Division
- Community Justice Assistance Division

Correctional Institutions Division

The Correctional Institutions Division operates **prisons**, which are facilities for nearly 135,000 people convicted of capital offenses and people convicted of first-, second-, and third-degree felony offenses, and state jails, facilities for people convicted of state jail felony offenses. Texas leads the nation in imprisoning its citizens with the largest incarcerated population under the jurisdiction of its prison system. In addition, Texas has been the top state for state prison growth, with a rate of nearly twelve percent compared to the nation's average of six percent. Nearly one in five new prisoners added to the nation's prisons was in Texas, and one fourth of the nation's parole and probationers are in Texas.[60]

State Prisons The TDJC is headquartered in Huntsville, where it currently operates over 100 state prisons.[61] The Texas Prison System purchased its first prison farm in 1885. Historically, the Huntsville Unit served as the administrative headquarters of the Texas Prison System; the superintendent and the other executive officers worked in the prison, and all of the central offices of the system's departments and all of the permanent records were located in the prison.

In the 1960s, the Texas Prison System began referring to the prisons as "units". Texas began building prisons outside its traditional locations in the 1980s.[62] The average annual growth of Texas' prison population during the 1990s was 11.8 percent. This rate of growth was not only the highest growth in the nation, but was almost twice the average annual growth of the other states during that same period.[63] Predictably, this exponential growth in the number of inmates always requires the construction of new prisons.

The Death Penalty Any discussion about the state's correctional institutions must include more than a casual reference to the death penalty. Texas was the first state to use private prisons.[64] During the 1980s, the Texas Department of Criminal Justice (TDCJ) experienced an overcrowding crisis. Admissions to Texas prisons increased by 113 percent from 1980 to 1986, and outpaced system capacity increases by fifty-two percent.[65] In 1987, Texas legislators overwhelmingly passed Senate Bill 251 to allow contracts with private prison vendors to manage and construct private prison facilities.[66] Proponents of private prisons argued that they would increase the quality of care by improving rehabilitation and reducing recidivism rates. Opponents to privatizing incarceration in Texas argue that profit incentives may put financial gain above the public interest of safety and rehabilitation.[67]

Before 1923, counties carried out their own executions, by means of hanging. Now, The Huntsville Unit is the location of the State of Texas execution chamber (**Figure 12.4**). In 1923, the state of Texas ordered all executions to be carried out by the state, in Huntsville, by means of the electric chair. Texas electrocuted 361 inmates from 1924 to 1964. In 1964, judicial challenges to capital punishment resulted in a temporary prohibition of executions in the United States. In 1972, the U.S. Supreme Court ruled that every state death penalty law in the U.S. was unconstitutional because the death penalty was being unfairly and arbitrarily assigned.[68] Thereafter, the governor of the state commuted the death sentences of the fifty-two men on death row to life imprisonment. However, four years later, the Supreme Court held that the imposition of the death sentence did not violate the Eighth Amendment prohibition of "cruel and unusual" punishment.[69]



Figure 12.4 Texas State Penitentiary at Huntsville. Nicknamed "Walls Unit", the Huntsville Unit (HV) is operated by the Correctional Institutions Division of the Texas Department of Criminal Justice (TDCJ). The facility is the oldest Texas state prison, opened in 1849.1 HV houses the execution chamber for the State of Texas. It is the most active execution chamber in the United States, with 570 executions (as of April 19, 2021) since 1982, when the death penalty was reinstated in Texas. SOURCE: "Texas death house" by BizarreRecords is licensed under CC BY 2.0; image credit: Nick DiFonzo.

In 1977, Texas adopted lethal injection as its means of execution, adopting a three-drug protocol. The injection now consists of a single dose of pentobarbital, a fast-acting barbiturate also used in animal euthanasia. The first lethal injection was administered in 1982. Although executions that year, they were rare. One execution was carried out in 1982, and none in 1983. For the next eight years, executions were carried out at the average rate of five per year. Thus, in the first ten years of capital punishment in Texas, there were forty-three executions. In 1992, the number of executions jumped dramatically. Over the next four years, sixty-two prisoners were executed, an average of fifteen per year.[70]

In 1995, the Texas legislature passed a law requiring certain death-row appeals to be filed concurrently. The intent of this law was to reduce the amount of time prisoners spent on death row (which is currently just short of eleven years) waiting for their legal appeals to be pursued. The short-term effect of this new law was that executions virtually stopped while it was being appealed. From March 1996 to January 1997, there was only one execution in the state. However, after the law withstood legal challenge, executions resumed at double their old pace. Over the next three years, there were ninety-two executions.[71]

In 2000, several factors caused the death penalty to come under scrutiny. Among those were (1) the continuing arguments that the existence of the death penalty and the methods by which it was administered is cruel and unusual; (2) legitimate studies that consistently exposed racial disparities at nearly every stage of the capital punishment process,

from policing and charging practices, to jury selection, to jury verdicts, to which cases result in executions; 3) a national consensus against the executive of the mentally impaired; and 4) the Supreme Court's ruling in 2005 that prohibited the imposition of the death penalty upon those who were under age of eighteen when they committed capital crimes. Predictably, Texas came under especially strong national scrutiny in 2000 because, at the time, it led the nation in executions—more than all other thirty-seven death-penalty states combined.[72]

Between 2000 and 2005, the average number of executions per year in Texas declined. Since then, the number of executions per year resumed at a more moderate pace. In 2005, Texas changed the law so that capital murderers sentenced by juries to either the death penalty or life imprisonment without the possibility of parole. Since then, Texas juries have demonstrated a tendency to sentence those convicted to life imprisonment.[73] There are over 200 people on death in Texas.

State Jails The Texas Department of Criminal Justice (TDCJ) oversees seventeen state jails, fourteen directly and three through private contractors, in sixteen counties throughout the state. The state jails' annual employee payroll for fiscal year 2019 was over $225 million.[74] Unlike county and municipal jails, state jail facilities are not intended for those awaiting trial or serving brief sentences for misdemeanors. State jail inmates are convicted felons—usually for lower level assault and drug, family, and property offenses—although they serve shorter sentences than most of those incarcerated in conventional prison units. Texas

created the state jail felony classification in 1993 as part of a reformation of sentencing laws. It was intended to address overcrowding in prisons caused by extensive prosecution of drug-related crimes. Over five years later, over fifty percent of state jail felons were convicted of possession or delivery of a controlled substance. State jail felonies include: burglary of a building; coercing a minor to join a gang by threatening violence; credit card abuse; criminally negligent homicide; criminal nonsupport; cruelty to animals; driving while intoxicated with a child passenger; evading arrest in a vehicle; false alarm or report; forgery of a check; fraudulent use/possession of identification; white collar fraud getting a hard money loan; improper photography or visual recording; interference of child custody; possession of less than one gram of a controlled substance; theft of something valued between $1,500 and $20,000; and unauthorized use of a vehicle.[75]

The punishment range for a State Jail Felony is 180 days to two years in the State Jail Division of the Texas Department of Criminal Justice (TDCJ) and up to a $10,000 fine. Since 2011, moreover, state jail inmates have been able to reduce their sentences by up to twenty percent by completing work or treatment programs offered by state jails. A judge must approve the sentencing reduction after this "diligent participation" is completed.[76] More than half of state jail felons participate in some programming while incarcerated, and most recently, about half of those discharged used credits to reduce their stays by an average of forty days.[77]

In 1995, the Legislature allowed defendants eligible for state jail to opt to serve their sentences in local jails or to be prosecuted for Class A misdemeanors, which involve lesser penalties without state jail time and, usually, no probation requirement.[78]

Parole Division

The TDCJ Parole Division supervises released offenders who are on parole, inmates in the state's pre-parole transfer program, and inmates in work programs. The division also investigates proposed parole plans from inmates, tracks parole eligible cases, and submits cases to the Texas Board of Pardons and Paroles. The division does not make decisions on whether inmates should be released or whether paroles should be revoked. The Texas Board of Pardons and Paroles decides which eligible offenders to release on parole or discretionary mandatory supervision, and under what conditions. The Board uses research-based Parole Guidelines to assess each offender's likelihood for a successful parole against the risk to society. It also decides whether to revoke parole if conditions are not met, using a graduated sanctions approach. Depending on the seriousness of the violation, the Board may continue parole, impose additional conditions, place the offender in an Intermediate Sanction Facility, or use other alternatives to revoking parole and sending the offender back to prison. Additionally, the Board recommends clemency matters, including pardons, to the governor.[79]

The parole division contracts with several agencies which operate halfway houses (also called residential reentry centers or sober living facilities) in thirty-seven cities in the state. According to state law, former prisoners must be paroled to their counties of conviction, usually their home counties, if those counties have acceptable halfway-housing facilities available. Most counties do not have such facilities available. Far fewer than the existing number of the existing facilities accept sex offenders, whose post-release conduct is governed by the Texas Sex Offender Registration Program. The program requires adult and juvenile sex offenders to register with the local law enforcement authority of the city they reside in or, if the sex offender does not reside in a city, with the local law enforcement authority of the county they reside in.[80]

Because of aspects of state law and because of a shortage of halfway houses, almost two-thirds of the sex offenders housed at the primary facility in Harris County are originally from another county. All people released receive a set of non-prison clothing and a bus voucher. State jail offenders receive a voucher to their counties of conviction. Prison offenders receive fifty dollars upon their release and another fifty dollars after reporting to their parole officers. Released state jail offenders do not receive money.

The Community Justice Assistance Division supervises adults who are on probation. In 1989, the Seventy-First Texas Legislature began using the term *community supervision* in place of the term *adult probation*. It is responsible for the distribution of formula and grant funds; the development of standards, including best-practice treatment standards; approval of Community Justice Plans and budgets; conducting program and fiscal audits; and providing training and certification of community supervision officers.[81]

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12.7: Recent Reforms of the Texas Criminal Justice System

Texas has long been known as a law and order state. The United States Constitution has a Bill of Rights that guarantees certain rights for those accused of crimes. While the Texas Constitution has a Bill of Rights with an extensive list of rights for the accused, it is one of the only states that follows that list with a specific list of rights for crime victims.

Sec. 30. Rights of Crime Victims.

A crime victim has the following rights:

1. the right to be treated with fairness and with respect for the victim's dignity and privacy throughout the criminal justice process; and
2. the right to be reasonably protected from the accused throughout the criminal justice process.
3. On the request of a crime victim, the crime victim has the following rights:
    1. the right to notification of court proceedings;
    2. the right to be present at all public court proceedings related to the offense,

        unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial;

    3. the right to confer with a representative of the prosecutor's office; the right to restitution; and
    4. the right to information about the conviction, sentence, imprisonment, and release of the accused.
4. The legislature may enact laws to define the term "victim" and to enforce these and other rights of crime victims.
5. The state, through its prosecuting attorney, has the right to enforce the rights of crime victims.
6. The legislature may enact laws to provide that a judge, attorney for the state, peace officer, or law enforcement agency is not liable for a failure or inability to provide a right enumerated in this section. The failure or inability of any person to provide a right or service enumerated in this section may not be used by a defendant in a criminal case as a ground for appeal or post-conviction writ of habeas corpus. A victim or guardian or legal representative of a victim has standing to enforce the rights enumerated in this section but does not have standing to participate as a party in a criminal proceeding or to contest the disposition of any charge.[82]

Despite these guarantees, Texas continues to have a well-deserved reputation for lengthy sentences, primitive prison conditions and policies, and tough judges. And, for those seeking elective office in the state's legislative and executive branches, appealing to the state's base of voters who support these and other traits of the criminal justice system makes political sense. Because Texas has always been among the country's most conservative states, the legislature's actions—or inactions—have politically mirrored the beliefs by the more conservative voters in the state who want crime reduced or eliminated and unapologetically favor the death penalty. Not surprisingly, politicians from both parties continue to pursue a very aggressive "tough on crime" agenda, especially through the 1990s.[83]

But, ever so slowly, the presumptions about what the people of Texas want are changing. The voters' political party affiliations and ideologies are evolving, and they appear to be more focused on one of the most critical questions relating to the criminal justice system. How should Texas balance the need to protect the rights of the accused with the public's right to law and order and victims' rights to see the criminals that victimized them brought to justice? There seems to be some recent political motivation to reform the criminal justice system. Already in Texas, there has been an increased, gradual emphasis on bail reform and community supervision and rehabilitation programs, such as drug treatment programs and electronic monitoring of offenders. In addition, voters value incarceration to a much lesser extent as a first response solution to crime, especially when they consider the fact that the daily costs for probation and parole are very small compared to those for incarceration.[84]

Despite lawmakers hopes for substantive criminal justice reform in 2019, the Eighty-Sixth Legislature ended its session without major reforms. In response to this troubling inaction, lawmakers from both parties created a new Criminal Justice Reform Caucus in the Texas House.[85] This unusual bipartisan coalition, which has developed during the past few sessions, is comprised of fiscally conservative Tea Party Republicans from suburban north Texas (who are concerned about big government and excessive criminalization) and Democrats (who focus on the political implications and moral impact of mass incarceration). Because this kind of cooperation is incredibly rare for Texas legislators, one must conclude that some parts of the criminal justice are now considered so untenable that they now demand—and have received— bipartisan support to foster reform.[86]

In this quest, more ground has been yielded "this new breed of [more moderate] Republicans" who are more interested in addressing different problems related to crime and policing issues.[87] One thing is certain, though. It is imperative that legislators, the governor, the TDCJ, other system stakeholders (police officers, judges, probation officers, parole officers, correctional officers, lawyers, court personnel, and others), and reform advocates collaborate to identify specific policy solutions that will move the Texas criminal justice system forward by holding offenders accountable in a way that improves better outcomes, increases public safety, and uses tax dollars efficiently.[88]

Texas is not typically the state that comes to mind when discussing effective criminal justice reform. The legislature's emphasis has more recently demonstrated an apathetic attitude regarding substantive reform measures. Interestingly, though, politicians and policymakers have praised Texas as a model for criminal justice reform, indicated that Texas has been "smart on crime" and smartly framing mass incarceration as a dollars-and-cents problem for taxpayers.[89]

The so-called Texas Miracle originated in criminal justice reform dating back to 2007, when legislators decided against spending an estimated two billion dollars on new prison construction to accommodate projections that the state would need tens of thousands of additional prison beds by 2012.[90]

"Instead, lawmakers enacted modest changes in probation and parole to divert some people to community supervision. They also restored some funding for substance abuse and mental health treatment that had been slashed a decade earlier."[91]

Defenders of the 2007 legislation contend that it resulted in major decreases in the crime rate and the incarcerated population, both of which have saved taxpayer dollars. Neither of this claims are supported by current statistics.[92]

In fact, aside from one glaring exception, Texas remains 'more or less the epicenter of mass of incarceration on the planet, according to Scott Henson of "Grits for Breakfast," the well- known blog relating to crime and punishment in Texas.[93]

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12.8: Prospects for Future Criminal Justice Reform

Despite its historical reluctance to address critical criminal justice issues, the Texas legislature is keenly aware of demands from beyond its ranks to consider and pass legislation to address a number of issues: rescinding previous counterproductive legislative measures that are detrimental to the rehabilitation efforts of incarcerated individuals[94]; lessening the financial and emotional burdens on both incarcerated individuals and their community of supporters[95]; recognizing the growing imbalance between growing legislative spending on criminal justice and the dramatic reduction of community-needed resources by state and local governments[96]; reversing the use of policing, arrests, and criminal punishments as default responses to the mentally disabled, citizens with substance abuse disorders, and people experiencing poverty and homelessness[97]; over-relying on costly, reactive criminal justice responses instead of proactively addressing the underlying causes of criminality that have resulted in mass incarcerations[98];failing to consider the implementation of measures that might “stem the tide of women’s incarceration, improve their conditions of confinement, and help women successfully return to their families and communities”[99]; refusing to recognize that women in Texas prisons face unique challenges, that an overwhelming percentage of incarcerated women are mothers, that black women are disproportionately impacted by incarceration, and that nearly two-thirds of women in Texas prisons are incarcerated for a nonviolent (primarily drug-related) offenses[100]; ignoring the fact that individuals with intellectual and developmental disabilities are disproportionately more likely to become involved and entrenched in the criminal legal system, either due to a lack of training or because assessment tools are not tailored to identify these disabilities[101]; and failing to address the numerous unique challenges and obstacles, such as increased victimization in jail and prison, longer sentences, and decreased likelihood of probation or parole inmates with mental disabilities face once involved with the criminal legal system.[102] Advocates generally offer prospective solutions to the Texas legislature they believe will represent large steps toward criminal justice reform: lowering penalties for minor drug possession; requiring probation practices to focus on rehabilitation and more prudently use taxpayer dollars; reforming the parole system by providing rehabilitation before parole review; supporting reentry strategies that prioritize housing and employment stability; more effectively using funding for treatment programs that ensure participant success; and closing more prisons and reallocate dollars to community needs and crime prevention.[104]

Even less rare are occasions when the Texas legislature considers measures to reform the manner in which law enforcement officers perform their jobs. An unusual exception is the George Floyd Act, which proposes reforms relating to interactions between law enforcement and individuals detained or arrested on suspicion of the commission of criminal offenses, witnesses to the commission of those offenses (and other members of the public), peace officer liability for those interactions, and the confinement, conviction, or release of detained or arrested individuals. The Texas Legislative Black Caucus publicly announced its support for the bill in August 2020, but it was officially proposed as House Bill 88 until November 2020.[105] If the bill is passed by the legislature and signed by the governor, it would ban the use of chokeholds by law enforcement officers in Texas, create new ways for victims of police brutality to hold officers accountable, require officers to intervene when a fellow officer is using excessive force, and end arrests for some misdemeanor offenses.[106]

More specifically, the act targets the current "qualified immunity" that shields law enforcement from personal civil liability for on-the-job misconduct, thus allowing officers to be sued in state district courts and providing an opportunity for retribution and monetary compensation for survivors of unwarranted police brutality. It also requires officers to attempt de-escalation tactics before resorting to force.[107] HB 88 (which has also been introduced in the Texas senate in similar form) is currently languishing after its referral to a standing committee in late February 2021.[108]

Interestingly, the state's two agencies that regulate local law enforcement and corrections are both up for review this session.[109] This review is performed by the Sunset Advisory Commission, which periodically evaluates the state’s bureaucratic agency, panels, boards and commissions and issues recommendations relating to those entities.[110] Sunset is essentially the regular assessment of the continuing need for a state agency or program to exist. The Sunset process works by setting an automatic termination (Sunset) date in state law on which an agency will be abolished unless the Legislature passes a bill to continue it. This date determines when an agency is subject to Sunset review and provides the legislature the opportunity to closely review an agency’s mission, priorities, and performance and take action to address identified problems.[111]

Included within its review are the recommendations of others interested in, or affected by, that agency’s performance and public testimony. While the legislature makes the final decisions on statutory changes to an agency, it has historically relief heavily on the commission’s recommendations. Typically, the commission recommends whether to abolish or continue an agency. If

the commission decides that a state agency is still needed, it then evaluates the agency's programs, operations, and success in fulfilling its mission and perhaps proposes statutory changes to solve problems identified in its staff's report and during public hearings. It also occasionally suggests that a combination of the functions of two or more agencies to streamline state government is warranted.[112] The most recent Sunset staff report on the Texas Commission on Law Enforcement is highly critical of the agency's failure to impose meaningful professional standards, regulate police training, and hold officers accountable for misconduct.[107]

The commission's findings generally reveal that while Texas has a continuing need to regulate law enforcement, its current approach to regulating law enforcement is ineffective. More precisely, it asserts that the state's bifurcated approach to administrating criminal justice has resulted in a fragmented, outdated system with poor accountability, lack of statewide standards, and inadequate training because the TCOLE is only authorized to set and enforce minimum licensure standards and has no authority to set or enforce standards of professional conduct except in the case of a licensee's criminal conviction or deferred adjudication. In addition, because TCOLE has no authority over law enforcement agencies, any significant regulatory gaps that now exist can only be addressed through changes initiated by the Texas legislature rather than the state's fundamentally irreparable regulatory system. While the Sunset Commission has recommended continuing TCOLE for an additional two years and the implementation of changes the agency can currently implement its efficiency and effectiveness, it has also endorsed the creation of a panel to comprehensively review and recommend needed changes to improve law enforcement regulation in Texas.[113]

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113. Sunset Advisory Commission, Staff Report with Commission Decisions – Texas Commission on Law Enforcement - 2020-2021 – 87th Legislature (January 2021), https://www.sunset.texas.gov/public/...0Decisions.pdf.

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12.9: Conclusion

Criminal justice is the delivery of justice to those who have committed crimes. In Texas, the criminal justice system is represented by a collaborative effort by a number of government agencies and institutions whose goals are to identify and apprehend those are suspected of, or have committed, criminal conduct and playing critical roles in the prosecution, punishment and the parole process relating to convicted criminals. The manner in which the state's post-trial criminal justice system—which focuses more on punishment than on rehabilitation—operates mirrors the sentiments of most of its residents. Texas political culture favors swift and stern punishments for offenses against the law, especially in the areas of violent crime. There is significant pressure on the Texas legislature to accommodate the political wishes of the state's electorate, contrary to popular legislative and other trends evidencing themselves in new law enforcement strategies and techniques, the creation and operation of alternatives to the courts, and the post-conviction criminal justice systems of those beyond the state's borders. This is especially so when voters perceive that departures from the norm may actually benefit those who have been criminal accused and convicted. Many fail to recognize that the criminal justice system must not protect its citizenry, but—perhaps more importantly—it must protect the constitutional rights of those who are accused, tried and convicted of crimes. Still, it is anticipated that reforms will, in fact, materialize when one considers the consistent demographic changes of the state and, with them, the slow and gradual political changes that generally accompany those shifts.

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12.10: Critical Thinking Questions

Reforming the Texas Criminal Justice System

Question: What are some recommendations for reducing the state's prison population? Which one is most likely to succeed and why?

Feedback: Texas is among the states with historically high prison populations after decades of extraordinary growth. This rapid growth has become a financial burden to the state's taxpayers. Some suggest that the burgeoning prison population is due, in part, to low incomes and levels of education in socioeconomically challenged areas.

In recent years, many states --- including Texas --- have cut primary, secondary and higher education funding, in some cases by large amounts. It is recommended that states could start repairing the damage done by recession-era cuts and otherwise improve their education systems, especially in high-poverty neighborhoods most directly affected by high incarceration rates by implementing one or all of the following strategies:

- Expanding access to high-quality preschool the by increasing, rather than decreasing, "per child" funding
- Reducing class sizes in high-poverty schools, where there are generally more students per classroom.
- Revising state funding formulas to invest more in high-poverty neighborhoods, where property taxes raise substantially less income than is collected in wealthier area.
- Increasing college enrollment and graduation rates for students from low-income families, who are far less likely to enroll in college than students from wealthier households, less likely to graduate, and less likely to afford tuition and other costs associated with higher education.

Juvenile or Adult

Question: How should offenders under the age of 18 years of age be treated in Texas? Are they adults, or are they juveniles? Does their status depend upon the crime they commit? Consider these issues as you formulate an educated opinion about this issue and recommend a viable solution.

Feedback: In Texas, 17-year-olds who commit a crime are considered adults and enter the adult criminal justice system. Texas is one of only 7 remaining states that charge 17-year-olds as adults.

Proponents of reform assert that the impact of this policy is significant, as the overwhelming majority of those arrests are for nonviolent offenses, including drug possession and theft. They also contend that research indicates that young people who are kept in the juvenile justice system are 34% less likely to re-offend than young people who are transferred into the adult system.[1] Further, proponents of change claim that if Texas does not enact a new law in this area, incarceration of minors in the state would continue to risk being at odds with a federal law – the Prison Rape Elimination Act, which bars 17-year-old inmates from being within "sight or sound" of inmates 18 and older.

Critics counter that the practice could do more harm than good to children, who they say should not be locked up with adult offenders instead of being treated with 16-year-olds and younger people in the juvenile justice system. Several states automatically treat 17-year-olds as adults in criminal cases, while some do the same for 16-year-olds. The severity of the crime often determines which court, and at what level, an offender is tried. And, is often the case, the enormous costs associated with such a change (the construction of new facilities to accommodate a much larger number of newly defined juvenile offenders) acts as a disincentive to change the existing law.

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1. Texas Criminal Justice Coalition. Return Children Under the Age of 18 to the State's Juvenile Justice System. (2020)

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13: STATE FINANCE

Learning Objectives

After reading this chapter, you should be able to:

- Explain the basic structure of Texas government finance.
- Articulate the legislature's role in controlling state revenue and expenditures.
- Identify the roles of agencies and interest groups in the appropriations process.
- Discuss issues and controversies surrounding Texas government finance.

In July, 2020, Texas Comptroller Glenn Hegar delivered bad news to the state. The coronavirus pandemic had a significant negative impact on the state's economy, which in turn had a negative impact on tax revenues, which meant that state finances were going to be off. Off by about five billion dollars.

The budget that had been approved the year before was no longer accurate. In a state that prides itself on being pay-as-you-go, this created a problem.[1] Prior to each meeting of the state legislature, the comptroller is constitutionally required to provide them with the biennial revenue estimate, which forecasts how much tax revenue with be collected in the state's general revenue fund, which is used for general purpose spending. This is a major portion of the revenue that funds the state, other sources include federal funds. Constitutionally, these establish a ceiling for state spending. The amount of funding authorized in the General Appropriations Bill must not exceed the estimated revenue. In order to ensure that this is the case, the comptroller must certify the bill stating that the budget does not spend more than will be collected during the next fiscal period. This ensures—at least in theory—a balanced budget.

Prior to the meeting of the Eighty-Sixth Regular Session of the legislature, Hegar claimed the over $121 billion would be available in the general revenue for the budget that would fund the state from September 1, 2019 until August 31, 2021.[2] He also warned, as is common, that unforeseen circumstances could impact the actual amount the state would receive. This had happened a decade before when the collapse of the housing market in 2008 reduced the amount of revenue that the state was predicted to receive.[3] The state then had to scramble to pay for the resulting deficit, this included significant cuts to education. This time the unforeseen circumstance was a pandemic that shut down a significant part of the state's economy for almost a year. The original estimate of $121 billion was no longer accurate, in his July speech he delivered a revised estimate of $110 billion. The existing budget had been set with the former figure in mind, meaning that the budget no was no longer balanced. It had originally been in surplus, since the legislature decided not to spend all the funds projected to be available. The state faced a projected shortfall of over four billion dollars, which had to be made up somehow. All this occurred in an environment where the needs of local hospitals and emergency officials were increasing. Texas was once again facing a fiscal crisis.

As time wore on, and federal funds began to have an impact on the state's economy, revenues increased. More people were purchasing goods and services. The comptroller noted that people were having staycations instead of vacations, so they were spending money in the state that would have otherwise been spent outside the state. As a result, the comptroller continued to revise his estimate, and the numbers started to improve. By the time the Eighty-Seventh Legislature met in January 2021, the comptroller estimated a more manageable one billion dollar deficit for the 2020-2021 budget (**Figure 13.1)**, which the legislature still needed to fund in whatever matter was politically expedient. The comptroller also presented his estimate that $112.5 billion was likely to be collected in the General Revenue Fund between September 1, 2021, and August 31, 2023. This became the upper limit for the spending approved by the legislature for the General Revenue Fund during the session. By staying within those bounds, the state will be able to fulfill the spending commitments it makes in the budget. Baring of course, unforeseen circumstances.

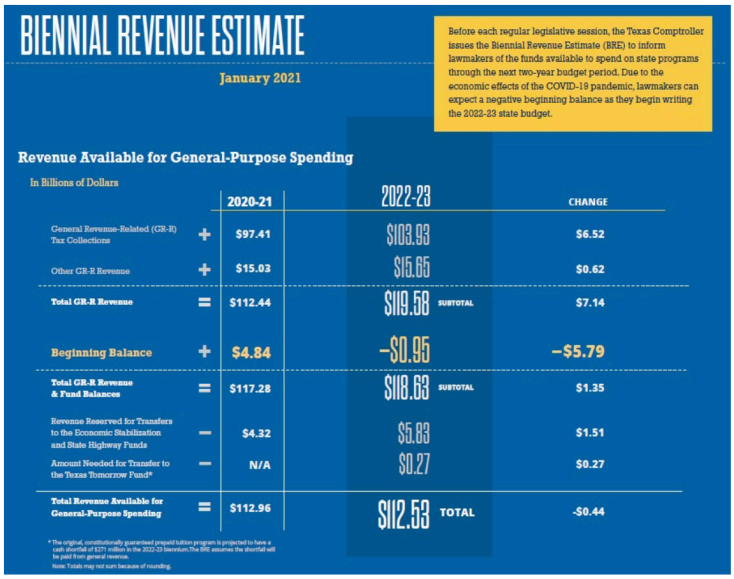


Figure 13.1 Comptroller State Revenue Estimate, January 2021. SOURCE: Courtesy Texas Comptroller of Public Accounts.

13.1: What Is State Finance?

13.2: The Development of a Budgeting Process

13.3: The Texas Treasury

13.4: Revenue, Funds, and Expenditures

13.5: Conclusion

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1. Cassandra Pollock, “Texas Faces a Looming $4.6 Billion Deficit, Comptroller Projects,” *Texas Tribune*, July 20, 2020, https://www.texastribune.org/2020/07...t-comptroller/.

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13.1: What Is State Finance?

The story above illustrates the ongoing nature of state finance, and the role of budgets in determining what states do. A budget isn't simply a static document, it determines how money will flow not only within the governing institutions, but within the overall state economy. In a very real sense, the flow of funds through these institutions is much like the flow of blood in a body. It keeps it alive. A simple definition of a budget is "an estimation of revenue and expenses over a future period of time and is usually complied and re-evaluated on a periodic basis."[4] It is an ongoing process that directly involves every agency that receives state funds, and also connects the state with the federal government. Beyond that, it impacts ever person in the state who purchases and item subject to a sales tax.

Just like private organizations, public organizations must be financed. Revenue must be acquired in order to pay for the goods and services it provides. Public financing is different than private financing because public entities can draw taxes, and generally spend funds on items that the electorate approves of either in bond proposals, or though their representatives. Private businesses gain revenue by provide goods and services for a fee, and spend money on the item— labor, raw materials, equipment—necessary to produce those goods and services. This creates a source of revenue that then can be used to create the products that will be sold on the market. Public financing begins with a sovereign government with the power to tax and the responsibility to provide certain goods, benefits, and services for the general public.

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4. Akhlesh Ganti, "Budget," Investopedia, Mar. 18, 2021, https://www.investopedia.com/terms/b/budget.asp.

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13.2: The Development of a Budgeting Process

Article 3, Section 33 of the Texas Constitution states: "All bills for raising revenue shall originate in the House of Representatives, but the Senate may amend or reject them as other bills."[5] Section 49 mandates debt not exceed revenue:

> No debt shall be created by or on behalf of the State, except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or pay existing debt and the debt created to supply deficiencies in the revenue, shall never exceed in the aggregate at any one time two hundred thousand dollars.[6]

The latter is notable since it establishes the principle of a **balanced budget** in the state. If no debt is authorized, then presumably the budget remains in balance since expenses will be covered by existing revenues. Chapter 3 on the Texas Constitution detailed how Section 49 has continued to be amended to allow for the sale of bonds to fund additional spending.

As with the national government, the growth in spending—along with the increased complexity of the areas of spending—let to calls to oversee the process. This became over time the budgeting process in place today. Key steps along the way include the General Revenue Estimate; Legislative Budget Board; fiscal notes; limitations on rate growth; and performance based budgeting.

Step One: General Revenue Estimate

On November 11, 1942, voters approved an amendment to Article 49, Section 3, "requiring all bills passed by the Legislature on and after January 1, 1945, appropriating money for any purpose, to be sent to the Comptroller of Public Accounts for his approval."[7] In addition, the comptroller is required to provide "an itemized estimate of the anticipated revenue based on the laws then in effect that will be received by and for the State."[8] This estimate is called the **General Revenue Estimate**, and is presented to the legislature prior each regular session. They cannot authorize spending from the general revenue beyond this figure. This is the basis of the principle of **pay-as-you-go,** but this principle does not apply to many other funds received by the state. It is limited to the General Revenue Fund.

Step Two: Legislative Budget Board

In 1949, the **Legislative Budget Board (LBB**) was created All state agencies were required to submit budget requests to them, which would then be reviewed and any necessary changes would be recommended.[9]

The LBB is a permanent joint committee of the legislature responsible for taking the budgetary requests and using them to draft the budget for the state. The LBB is governed by a ten person board. Five members of the board serve as representatives of an office (i.e., in an *ex- officio* capacity): the lieutenant governor, the speaker of the House, the chairs of the House Appropriations and Ways and Means Committees, and the Senate Finance Committee. Two House members and three additional senators are appointed by the speaker and lieutenant governor respectively.

The LBB staff also produces the Fiscal Size-Up after the end of each session of the legislature. The **Fiscal Size-Up** thoroughly documents the revenues and expenditures contained in the General Appropriations Bill. The Fiscal Size-Up has been the source for the bulk of the information contained in this chapter.

Step Three: Fiscal Notes

In 1973, the legislature mandated that the LBB research the fiscal impact of bills under consideration. These are called **fiscal notes**, and they inform members of the legislature of the potential impact of a bill on spending or revenue collection.

Step Four: Limitations on Rate of Growth

In 1978 the voters approved an amendment to Article 8 of the Texas Constitution that limited the rate of growth of appropriations to that of the state's economy.[10] Once complied, the legislature will be able to make informed decisions how to adjust the budget

accordingly. (The Texas Government Code exempts other funds, such as dedicated and federal funds, from this limitation[11]; dedicated funds will be discussed later in the chapter.)

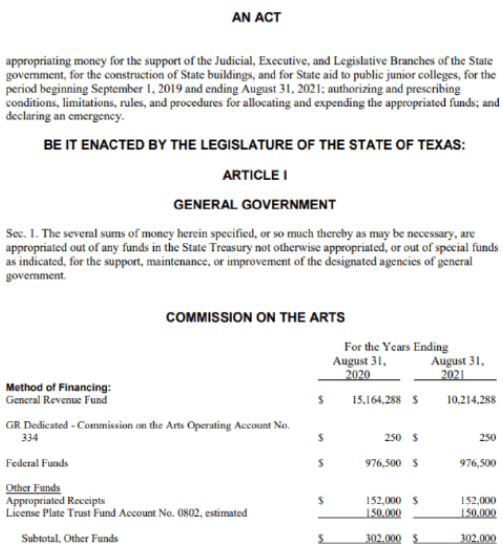
Step Five: Performance Based Budgeting

In 1991 the state created the Strategic Planning and Performance Budgeting System, which required each executive branch agency to create five year strategic plans that tied the budgets in with the development and accomplishment of agency goals. This **performance based budgeting** system goes beyond a simple request for funds into a system that allows for expenditures to be evaluated in terms of their measurable accomplishments.

The Budget Process for 2020-2021

As a way of illustrating the budget process, consider the timeline of the 2020-2021 biennial budget[12]:

- May and June 2018: The LBB sent instructions to all state agencies regarding how to submit requests, and what sorts of requests would be considered. These are called *Legislative Appropriations Requests* (LARs).
- July and August 2018: Each state agency submitted their complete LARs, as well as strategic plans, to the LBB and the Governor's Office of Budget, Planning and Policy (GOBPP).
- September to December 2018: Hearings were held by both the LBB and the GOBPP on the LARs and strategic plans submitted by the state agencies. Each then creates their own budget recommendations that were submitted to the legislature when it convened January 8, 2019.
- January 2019: The comptroller submitted the 2020-2021 Biennial Budget Estimate as required. Each chamber of the legislature submitted the LBBs recommended budget, as did the governor. These documents containing approximately 1000 pages each. These were the foundation of what became the General Appropriations Bill (**Figure 13.2**).



AN ACT

appropriating money for the support of the Judicial, Executive, and Legislative Branches of the State government, for the construction of State buildings, and for State aid to public junior colleges, for the period beginning September 1, 2019 and ending August 31, 2021; authorizing and prescribing conditions, limitations, rules, and procedures for allocating and expending the appropriated funds; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE I

GENERAL GOVERNMENT

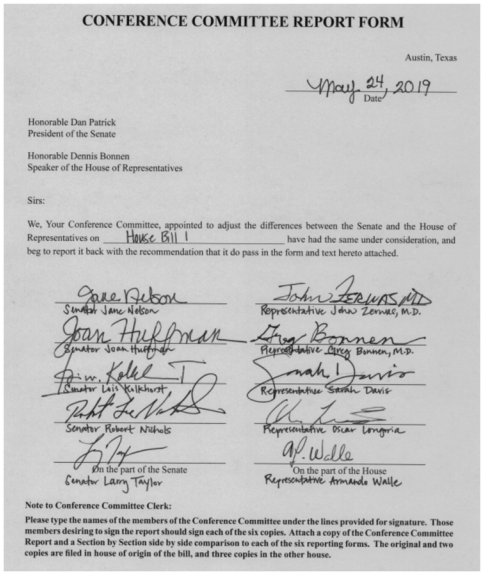
Sec. 1. The several sums of money herein specified, or so much thereby as may be necessary, are appropriated out of any funds in the State Treasury not otherwise appropriated, or out of special funds as indicated, for the support, maintenance, or improvement of the designated agencies of general government.

COMMISSION ON THE ARTS

	For the Years Ending August 31, 2020	August 31, 2021
Method of Financing:		
General Revenue Fund	$ 15,164,288	$ 10,214,288
GR Dedicated - Commission on the Arts Operating Account No. 334	$ 250	$ 250
Federal Funds	$ 976,500	$ 976,500
Other Funds		
Appropriated Receipts	$ 152,000	$ 152,000
License Plate Trust Fund Account No. 0802, estimated	150,000	150,000
Subtotal, Other Funds	$ 302,000	$ 302,000

Figure 13.2 Page 1 of the General Appropriations Bill. SOURCE: Texas Legislature Online, https://capitol.texas.gov/BillLookup...s=86R&Bill=HB1.

- February and March 2019: Hearing on the two different versions of the General Appropriations Bill were held in, respectively, the House Appropriations Committee and subcommittees and the Senate Finance Committee.
- April and May 2019: Mark up began in the House and Senate committees, which allowed for the documents to be modified. Once approved by the committees, they were reported to the floor of each chamber, and made available for further amendments. Once passed by each chamber, a Conference Committee was appointed by the presiding officer of each chamber, differences were reconciled and presented on the floor of each chamber as a conference report which was then approved (**Figure 13.3**).



CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 24, 2019
Date

Honorable Dan Patrick
President of the Senate

Honorable Dennis Bonnen
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on House Bill 1 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Senator Jane Nelson
Representative John Zerwas, M.D.
Senator Joan Huffman
Representative Greg Bonnen, M.D.
Senator Lois Kolkhorst
Representative Sarah Davis
Senator Robert Nichols
Representative Oscar Longoria
On the part of the Senate
Senator Larry Taylor
On the part of the House
Representative Armando Walle

Note to Conference Committee Clerk:
Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

Figure 13.3. Conference Committee Report on H.B. 1, the General Appropriations Bill. SOURCE: Texas Legislature Online.

In addition to the General Appropriations Bill, the legislature passed a supplemental budget measure which funded the deficit that emerged in the 2018-2019 budget due to less than anticipated revenue collection (**Figure 13.4**).



Figure 13.4 Texas Comptroller of Public Accounts Glenn Hegar signing the 2020-2021 state budget and a supplemental spending bill approved in May by the Texas Legislature. Flanking Hegar are Phillip Ashley, associate deputy comptroller for fiscal matters, and Fiscal Management Division Director Rob Coleman. SOURCE: Photo courtesy Texas Comptroller of Public Accounts.

- June 2019: The conference report was certified by the comptroller in order to ensure that the amount appropriated would be covered by anticipated revenue. The bill then went to the governor for review. While the governor has line item veto authority, and has used it in the past, he vetoed no specific spending item in the 2020-2021 budget. He issued a brief signing statement regarding the bill, which stated the General Appropriations Act addressed the priorities of Texans by reining in property taxes, paying our teachers more, and funding work to combat human trafficking and sexual assault (**Figure 13.5**).



STATE OF TEXAS
OFFICE OF THE GOVERNOR

MESSAGE

House Bill 1, the General Appropriations Act, addresses the priorities of Texans. It dedicates $5 billion to rein in skyrocketing property taxes and provides for lasting property tax reforms for homeowners, renters, and businesses.

The budget prioritizes our school classrooms by paying our teachers more and focusing on the needs of students. It also makes our schools safer by hardening our campuses and expanding access to mental health resources.

The budget funds work to combat human trafficking and sexual assault, and to clear the rape-kit backlog. It also creates a fund to assist communities after natural disasters and to match federal aid for future storms.

This is not only a balanced budget, it also limits the growth of spending in the upcoming biennium to less than population and inflation growth, when adjusting for the cost of property tax relief.

House Bill 1, the General Appropriations Act, having been duly certified by the Comptroller of Public Accounts pursuant to Article III, Section 49a of the Texas Constitution, has been presented to me for action. I reviewed the legislation and approved House Bill 1 by signing the bill.

Respectfully submitted,

GREG ABBOTT
Governor of Texas

Austin, Texas
June 15, 2019

FILED IN THE OFFICE OF THE SECRETARY OF STATE
O'CLOCK
JUN 15 2019
Secretary of State

Figure 13.5 Governor Abbott's signing statement on H.B. 1, the General Appropriations Bill. SOURCE: Texas Legislature Online.

- September 1, 2019: The fiscal year began, and state agencies could begin drawing money from the treasury. They will continue to be able to do so until August 31, 2021, after which the budget approved by the Eighty-Seventh Legislature kicks in.

Figure 13.6 from the LBB illustrates the process.

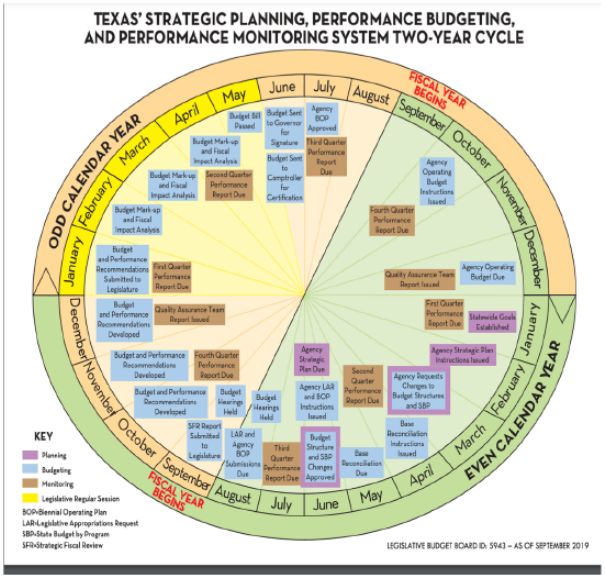


Figure 13.6 General Timeline of the Budget Process. SOURCE: Legislative Budget Board.

5. Tex. Const. art. III, §49, https://www.investopedia.com/terms/b/budget.asp.

6. Tex. Const. art. III, §49, https://www.investopedia.com/terms/b/budget.asp.

7. JR 1, 47th Regular Session, amends Tex. Const. art. III, §49a, Nov. 11, 1942, Legislative Reference Library of Texas, https://lrl.texas.gov/legis/billsear...NumberDetail=1.

8. Tex. Const. art III, §49a, https://statutes.capitol.texas.gov/D...CN.3.htm#3.49a.

9. Tex. Const. art. III, §49a, https://statutes.capitol.texas.gov/D...CN.3.htm#3.49a.

10. Tex. Const. art VIII, §22, https://law.justia.com/constitution/...te's%20economy.

11. Government Code, “Title 3. Legislative Branch; Subtitle B. Legislation; Chapter 316. Appropriations; Subchapter A. Limit on Growth of Appropriations,” https://statutes.capitol.texas.gov/d...htm/GV.316.htm.

12. Texas Legislative Reference Library, “Budget Process for the 2020-2021 Biennium,” https://lrl.texas.gov/legis/Budget2020_21.pdf.

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13.3: The Texas Treasury

The purpose of a budget is to oversee the money flowing into and out of the Texas Treasury, and while a budgeting process hasn't always existed, Texas has had a treasury since its days as a republic (**Figure 13.7**).[13]

The budgeting process described above simply manages the cash flow in and out of the treasury.

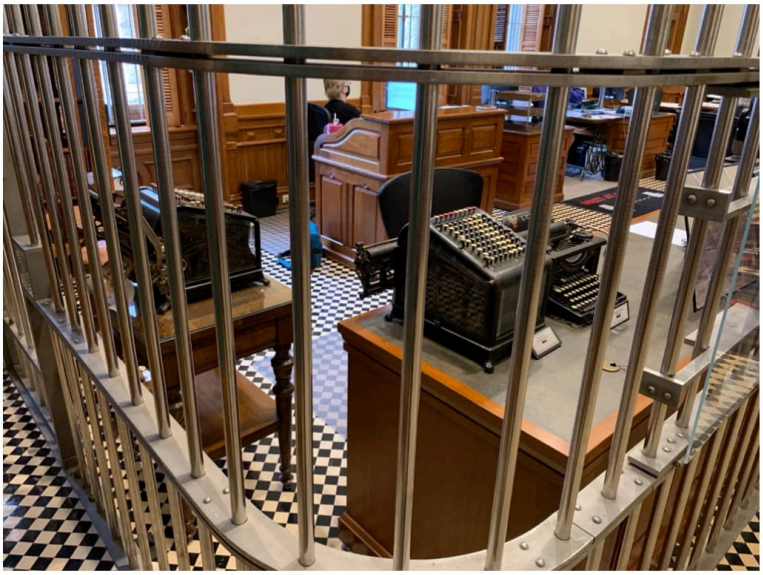


Figure 13.7 The original Texas Treasurer's Office on the first floor of the Texas Capitol served as the state bank of Texas. Tellers transacted business with representatives from all state departments at this long counter through the open windows of the steel bar partition. The State Treasury moved out of the Capitol in the early 1970s. SOURCE: Andrew Teas CC-BY.

Treasurer's Business Office

The Treasurer's Business Office describes the physical office of the state bank of Texas on its website:

The State Treasury served as the state bank of Texas. Four vaults in the Treasurer's Business Office on the first floor south wing of the Capitol held the state funds. Tellers transacted business with representatives from all state departments at a long counter through the open windows of a steel bar partition. The State Treasury moved out of the Capitol in the early 1970s.[14]

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13. An Inventory of Treasury Department Customs House Records at the Texas State Archives, 1836-1856," Texas State Library Archives Commission, undated, bulk 1836-1846, http://legacy.lib.utexas.edu/taro/ts...tsl-60018.html.

14. "Treasurers Business Office," State Preservation Board, https://tspb.texas.gov/prop/tc/tc-sp.../spaces11.html.

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13.4: Revenue, Funds, and Expenditures

A budget regulates a state's cash flow. There are three aspect to this flow. The first is the definition of which sources of revenue will be used to gather money into the treasury. The second is determining which of the many funds the revenue will be allocated to. The third is the expenditure itself. While this process is the same for all areas of funding in the state, the specifics vary. Here is a quick example of how these work in action. When you pump gas into your car—assuming you do, of course—you are charged a twenty cents per gallon gasoline tax.[15] This tax is sent by the owner of the gas station to the comptroller's office who then places it in the State Highway Fund. The Texas Department of Transportation can then draw from the State Highway Fund for "the furtherance of public road construction and for establishing a system of state highways."[16] This is a simple way to describe the process. Each stage is more complex than this, but this describes the general structure that efficiently ties the source of revenue to the good used by that source. Much of the information drawn for the discussion of revenue, funds, and expenditures are from the Fiscal Size-Up, discussed earlier in the chapter, which is written after the end of each legislative session by the staff of the Legislative Budget Board to describe as fully as possible the contents of the General Appropriations Bill.

There are various sources of revenue for the state (**Figure 13.8**). Not all revenues come from taxes. Some come from investments, fees, and penalties. Even more comes from the national government in the form of grants.

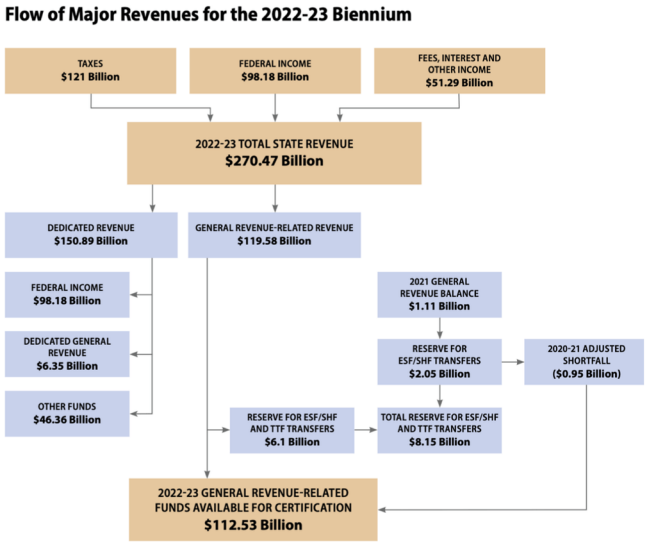


Figure 13.8 Estimated 2022-2023 Revenue. SOURCE: 2022-2023 Biennial Revenue Estimate, Glen Hegar, Texas Comptroller of Public Accounts, January 21, 2021.

These revenues are tied into a large number of funds, separate accounts in the state treasury that designate how the revenue will be spent. Some of these are flexible, meaning the money can be shifted as deemed necessary. Others are designated to specific purposes, meaning that the revenue collected is to be spent in a particular manner, which brings us to expenditures. There are approximately 200 funds are in the Texas Treasury.

Many of the funds in the Texas Treasury are **fixed funds**, which means that the amount of money they contain is tied into a specific source. The amount of money they contain depends on the activity from that source. In turn, the amount of money that can be spent is fixed as well. As a consequence, much of the budget is set and not subject to revision by the legislature. The only part of the budget that is truly flexible is contained in the General Revenue Fund. Items in the fund can be shifted as the legislature, and the executive, see fit.

Tax Revenue

Figure 13.9 breaks down where tax revenue is expected to come from in the 2022-2023 budget. Tax revenue is expected to be down some from the 2020-2021 budget, which expected revenue collected from tax breaks to total $123.9: Sales Tax ($72.5 billion); Motor Vehicle Sales and Rental taxes ($10,192.76 billion); Franchise tax ($8,836.80 billion); Oil Production taxes-

($7,837.50); Motor Fuel Taxes ($7,670.56 billion); Insurance taxes ($5,485.38 billion); Natural Gas Production tax ($3,067.14); Alcoholic Beverage taxes ($2,911.00 billion); Cigarette and Tobacco taxes ($2,523.99 billion); Hotel Occupancy tax ($1,352.42 billion); Utility taxes ($959.30 million); Other taxes ($647.74 million).

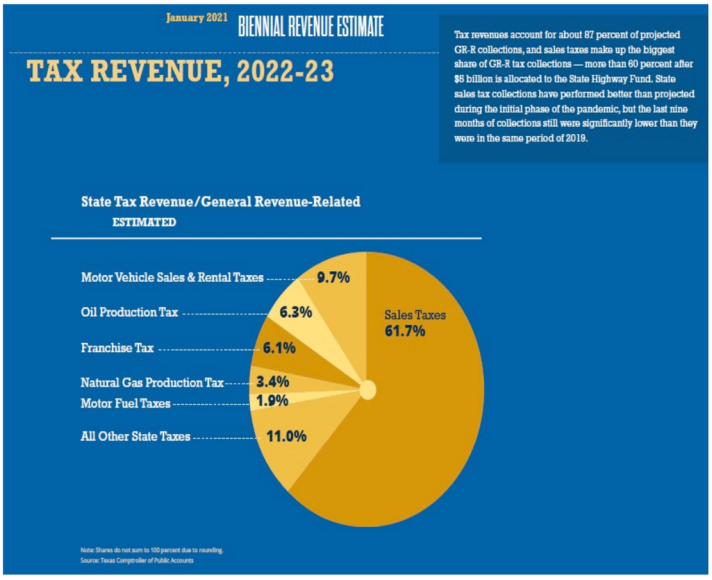


Figure 13.9 Sources of Tax Revenue (estimate), 2022-2023. SOURCE: Courtesy Texas Comptroller of Public Accounts.

Sales Tax The sales tax is the largest tax collected by the state government (see Figure 13.9). A sales tax can be collected by any local governments as well. The state has placed a limit of 6.25 percent on the state rate, and a total of 8.25 percent on the overall rate including what is imposed locally. For example, a resident in Houston pays a total of 8.25 percent sales tax. In addition to the 6.25 percent imposed by the state, one percent is collected by the City of Houston and one percent by the Houston Metropolitan Transit Authority. The state has exempted certain items from the sales tax, such as property used in manufacturing, food purchased for home consumption, gas and electricity, and water. For items that are not exempt, the tax is added to the costs of the purchased item by the seller who is then responsible for collecting the moneys and sending the proper amount to the state.

Motor Vehicle Sales and Rentals Tax People who purchase and rent one of a large variety of motor vehicles must pay a tax that is to be collected by the business owner. This includes automobiles, trucks, trailers, and motorcycles. For rentals of less than thirty days, the tax is ten percent. Longer rentals are taxed at 6.25 percent as is the standard sales tax rate. The vehicle sales tax is also 6.25 percent though a complicated system of exceptions can reduce it. ***Franchise Tax*** Despite the official name, this is a tax on business. It is also called a **margins tax** because of changes made in 2008 in how the tax was calculated. A variety of methods of calculation were created which limited how much of a business entity was subject to taxation. One method is to only make seventy percent of the total revenue of a business taxable. This seventy percent is the margin, which explains the use of the term. The bulk of the franchise tax is allocated to the General Revenue Fund while the remainder is allocated to the Property Tax Relief Fund.

Oil and Natural Gas Production Tax These taxes are, respectively 4.6 percent and 7.5 percent of the market value of the amount of each product drawn during the biennium. This is a **severance tax** since it is a one-time tax when oil or gas is removed from beneath the ground. Its market value is based on the average price of each item during each fiscal year on the New York Mercantile Exchange (NYMEX). These are important since they are major contributors to the Economic Stabilization Fund, which will be discussed later in the chapter.

Motor Fuel Taxes These are taxes upon the three types of motor fuel. Motor fuel taxes were the source of the example used above regarding the flow of money in the state budget. Gasoline and diesel are taxed at twenty cent per gallon, and liquefied and compressed natural gas are taxed at fifteen cents per gallon. Seventy-five percent of these revenues are placed in the State Highway Fund, and twenty-five percent are allocated to public education.

Motor fuels taxes, along with many listed below, are **excise taxes**. These are taxes imposed on the merchants who sell the product and are usually applied on a per-unit basis, for example, a gallon. Merchants often raise the prices of their goods as a way of passing them onto the consumers. Since they are not itemized, these are often called **hidden taxes**. Consumers are not necessarily aware that they are paying them, as opposed to the sales tax which is listed on receipts.[17]

Sin Taxes Certain taxes are called **sin taxes** because their purpose is not only to collect revenue but to increase the costs of the behavior in question. Drinking and using tobacco products impose costs on the greater society in terms of public health and public safety. This increases the costs associated with hospitals and law enforcement. Ideally, the increased costs imposed on the products reduces the tendency of people to engage in that activity. This should, in turn, reduce social costs. But in case it does not, the increased revenue can be allocated towards addressing the problems created by that behavior.

The state imposes a tax of $70.50 per 1000 cigarettes weighing three pounds or less, and $72.50 per 1000 cigarettes weighing three pounds or more. A portion of the revenue is deposited in the Physician Education Loan Repayment Program, and the remainder is deposited in the Property Tax Relief Fund.

Texas collects revenue from a variety of alcoholic products. As with motor fuel taxes, these are called *volume-based excise taxes* (that is, the taxes are fixed amounts per a set unit of volume). They are imposed on merchants. Wine and beers vendors are each responsible for paying an excise tax of twenty cents per gallon. Vendors of distilled liquors must pay an excise tax of $2.40 per gallon. Controversially, sales of all three are also subject to the 6.25 percent general sales tax, which is paid by the consumer.18 Critics of tax policy often point out that separate taxes are often collected at various points in the market.

Regressive and Progressive Taxes One of the more frequent criticisms made of the sales tax, and all other taxes related to the purchase of items, is that it is a r**egressive tax**, meaning that it imposes a higher burden on the poor than on the middle class, and a higher cost on the middle class than the wealthy. This is because the poorer you are, the greater a percentage of your income is spent on basic needs, which are often subject to the sales tax. A greater percentage of the income of the poor is therefore taxed, which makes it regressive. This is different from how the **income tax** is treated at the national level where the rate of taxes increases with each incremental increase of income. Since incomes at a high level—say $400,000—are taxed at a higher rate, the wealthy pay more in taxes as a percentage than the poor, so this is called a **progressive tax.**

A Word about State Property and Income Taxes Two types of taxes that the state cannot collect are:

- State Property Taxes;
- State Income Taxes.

At one point the state of Texas, and not only local governments, could collect a property tax. It funded a significant percentage of state expenditures. But in 1968, the state put an end to it. There was a simple reason in doing so, it was very difficult to manage statewide. A key requirement of taxes is that they be able to be collected. This was not the case for the state property tax. Collections were erratic, property undervalued, tax assessor-collectors sometimes corrupt, and following the Great Depression many properties were delinquent. Trying to collect them simply became more trouble than they were worth, and Texas began to rely more on the sales tax, among others, for revenue. The sales tax was, at root, much easier and cheaper, to collect.[19]

Non-Tax Revenue

The chart in Figure 13.8 identifies non-tax income generally as federal receipts and fees, interest, and other income. In addition to fees and interest, the Texas Lottery and Land Income are other sources of non-tax revenue for the state. More recently, bonds have become a way for Texas to generate revenue.

Federal Receipts The largest single source of revenue for the state—33.8 percent of all revenue—are federal receipts. These are expected to total $87.8 billion in 2020-2021. The state receives federal revenue in the form of **matching grants** and then uses to implement federal policies, especially those that impact individuals. Chapter 2 on federalism discusses *cooperative federalism*, a term used to describe when the national government became involved in areas of public policy previously reserved to the states.

Some of these policies can be traced to the New Deal in the 1930s, others to the Great Society in the 1960s. Some policies are run by the national government and provide direct benefits to people. The two most prominent are those for individuals over sixty-five: Social Security and Medicare. Others are run by the states, which are allowed to place restrictions on them. These include funds for the poor, such as Medicaid, Temporary Assistance for Needy Families (TANF), and the Supplemental Nutrition Assistance Program (SNAP).

Social Security and Medicare are federal programs that benefit those over sixty-five. The former provides funds for retirement, the later provides medical assistance. Each is funded by payroll taxes drawn from a person's paycheck, and matched by that person's employer. As a result, the funds eventually received are a reimbursement of the money paid into the accounts. The states have no consequential role in either policy. This is, at least in part, a result of the programs being relatively uncontroversial. This is not to say that controversies do not exist with either program, but the general sense is that the people who receive these benefits,

earned them and are therefore entitled to them. After all, they paid into funds—with matching grants by their employers. That make them deserving of the benefits.

This is not the case with Medicaid, TANF, or SNAP. These programs are made available to the poor, and are paid by incomes taxes, meaning that recipients have likely not contributed to their own welfare. Political battles often exist over whether those who receive Medicaid, TANF, or SNAP, are worthy of the benefits. Even if they are, the general sense in states like Texas is that benefits should be low and only available for a brief period of time.

Licenses, Fees, Fines, and Penalties Licenses, fees, fines, and penalties will likely bring in $13.24 billion in 2020-2021. As you can imagine, this includes a wide variety of items, such as hunting and fishing licenses, vehicle registration fees, penalties related to driving without a license, and past due taxes. The revenue from licenses, fees, fines, and penalties are often allocated to funds related to those receipts. For example, hunting and fishing licenses funds the Texas Wildlife Department and vehicle registration fees are allocated to the State Highway Fund.

Interest and Investment Income Interest and investment income is expected to bring in $4.4 billion in 2020-2021.[20]

The Lottery The Texas lottery is estimated to bring in $4.6 billion in 2020-2021. While the original 1876 constitution prevented the legislature from allowing for lotteries, amendments beginning in 1980 were ratified authorizing them in certain instances.[21] It was promoted as a way to supplement education funding since a portion of its proceeds is transferred to the Foundation School Fund. In 2019, this amounted to $1.5 billion. Since it is a lottery, and it promises payouts, it falls to reason that the dominant cost is payouts to winners. This came to $4.1 billion in 2019. In case you are curious, $70.9 million in winnings was unclaimed.

Land Income Land income is estimated to bring in $4.6 billion in 2020-2021. Land income is derived from mineral royalties and leases, land sales, and the sale of timber and sand. Up until the twentieth century, Texas was capital poor. The availability of land grants lured American immigrants to Spanish and Mexican Texas. After independence, land was made available to Anglo men with the understanding that they would clear and develop it. This would continue after statehood since Texas was able to retain possession of its land. Land grants were also made available to the veterans of the various wars it had been engaged in. This is a practice continued today.

Land grants were significant in funding the internal improvements necessary to promote commerce in the state. The construction of railroads and highways, and the clearing of rivers and development of harbors, among other things, were funded by the granting of land. This included the rights to any minerals—or oil and gas—that might be discovered beneath the surface.

Bonds Since the sale of bonds have become increasingly common as ways to supplement spending in the state, it is necessary to say a word about them. While the state of Texas officially

does not allow itself to go into debt, allowances have been made in recent decades to do so. The primary way of doing so is the sale of bonds. This allows for obtaining revenue for projects that exists outside of the normal revenue collection process.

A bond is similar to an IOU. It is a financial instrument offered in the marketplace to potential buyers. By purchasing the bond for a fixed price, the buyer is promised a specific return—an interest rate—at a particular moment in time. The buyer has to have a reasonable expectation that they will receive their investment back, with the promised interest, at the promised date. In addition to their use at the state level, they are the principle financial instrument local governments use to finance construction projects.

Voters have approved the sale of a number of bonds over the past few decades, as well as the creation of a variety of funds. This allows the state to go into debt, despite the language in the original constitution. It does however require the bonds to be added to the Texas Constitution in a process that involved two-thirds votes by each chamber of the legislature, and a simple majority vote by the electorate.

Types of Funds

The revenue that is collected by the state is then deposited in the Texas Treasury. This revenue is not treated the same, however. It goes into one of a variety of funds, some of which were mentioned earlier in the chapter. Some funds are generally available to any area of expenditure, while others are limited in terms of what they can fund. The Texas Treasury contains more than 400 funds, which then determine how they are spent, but these fall into four general categories: General Revenue Fund; Dedicated General Funds; Federal Funds; Other Funds (**Figure 13.11**).

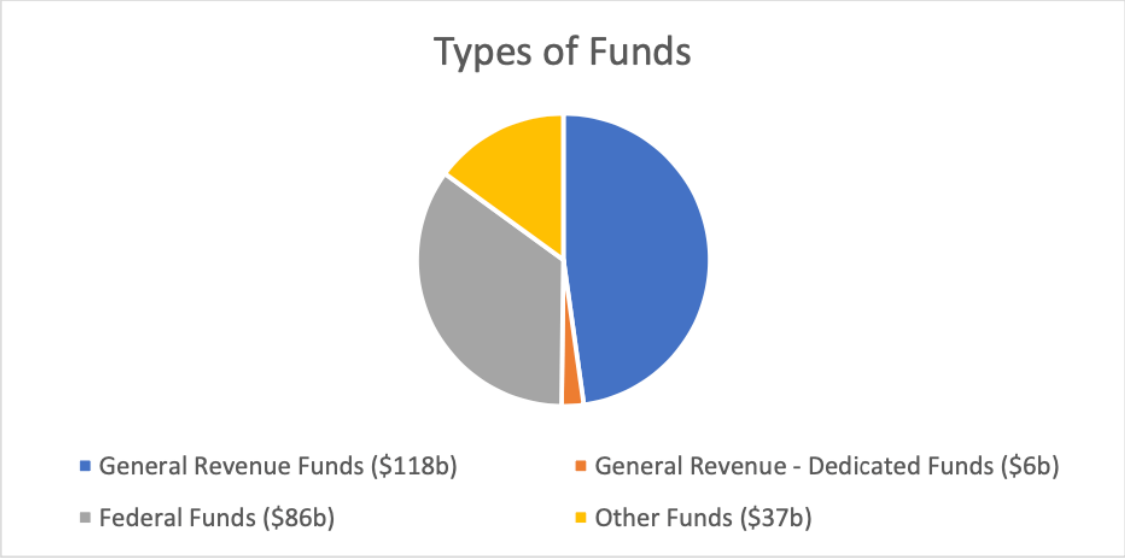


Figure 13.11 Allocations among Types of Funds, 2021. SOURCE: 2020-2021 Budget.

General Revenue Fund The General Revenue Fund is the state's primary operating fund. "Expenditures may be made directly from nondedicated General Revenue Funds, or, in some cases, revenue may be transferred from non-dedicated General Revenue Funds to special funds or accounts."[22] Among the taxes deposited initially to the nondedicated General Revenue Fund are the state sales tax, the franchise tax, motor vehicle sales taxes, alcohol and tobacco taxes, the oil production tax, the natural gas tax, and motor fuel taxes. General Revenue Funds also include the Available School Fund (ASF), the Instructional Materials Allotment (IMA), and the Foundation School Program (FSP), which is the primary source of school funding in the state. ***Dedicated General Funds*** These are funds included in the General Revenue Fund, but are not transferable. By law they are to be spent on a specific items. These include "more than 200 accounts within the General Revenue Fund that state law dedicates for specific purposes."[23] ***Federal Funds*** Federal funds are where the federal receipts mentioned earlier are deposited. Federal funds are grants, allocations, payments, or reimbursements received from the federal government by state agencies and institutions. The largest portion of federal funding appropriations are for the Medicaid program discussed earlier. Other examples of Federal Fund appropriations include grants to Local Educational Agencies, the National School Lunch Program, Transportation Grants and National Highway System Funding, Special Education, Basic State Grants, and the Children's Health Insurance Program (CHIP).

Other Funds In 1991 the legislature placed over 200 funds within the General Fund but created distinct accounts for them which dedicated them to specific uses. Not all funds were included in the consolidation. These make up the bulk of what is found in this broad category. These include some of the more significant funds in the state, including the State Highway Fund, the Texas Mobility Fund, the Property Tax Relief Fund. In addition, this category includes the trust fund, bond proceeds, and interagency contracts.

Economic Stabilization Fund The Economic Stabilization Fund—otherwise known as the *Rainy Day Fund*[24]—was established in 1988 to provide an auxiliary source of money should the state's anticipated revenue fall short, and the state risks running a deficit.[25] The impetus behind its creation was the oil crash of the 1980s, which helps explain the connection mentioned earlier in the chapter between oil and gas taxes and the fund.

Expenditures

The legislature is responsible for establishing how revenue is collected, which includes establishing and setting tax rates, but there are **constitutional limits on spending** established in the Texas Constitution. The Fiscal Size-Up puts these limits into four categories: pay-as-you-go; limits on welfare spending; limits on the rate of growth of appropriations; and limits on debt service.

Pay-as-You-Go As discussed earlier in the chapter, Texas is a pay-as-you-go, balanced budget state, following the mandate of Article 3, Section 49a (The Legislative Branch) of the constitution, which was most recently amended in 1991. As mentioned earlier, the term *pay-as- you-go* simply means that the state's budget must balance. Expenditures cannot exceed revenues. Consequently, the state cannot go into debt. As written in 1876, the restriction was severe, which worked well for an agrarian economy. The state's ability to create debt was limited to casual deficiencies of revenue less than $200,000, repelling invasions,

and suppressing insurrection. Debt can also be created if authorized in the constitution itself—a significant exception.

This proved too restrictive for the government of a state transforming into a commercial economy, and the development of the infrastructure necessary to sustain it. Changes in 1991 made the process of acquiring debt easier, but it still required a constitutional amendment which involves a supermajority votes in both houses of the legislature—two-thirds in the House and in the Senate—and a simple majority of the voters in the state. Voters are given the opportunity to approve, or disapprove the sale of bonds to be sold by the state for designated purposes. If the voters of the state approve these bonds in the form of a constitutional amendment, then the spending is allowable. In 2019 the voters approved three billion dollars in additional bonds to fund the Cancer Prevention Institute of Texas. The obvious consequence of this change was the acquisition of a sizable amount of debt by the state. Conveniently, Section 49 contains the language which has provided that authorization, which allows for an understanding of the purposes for the debt.

Limit on Welfare Spending In 1933, during the height of the Great Depression, the national government began to pass a series of laws authorizing matching grant programs for the states. This has always been a source of dispute in Texas since accepting the grants meant that Texas is obligated to pitch in funding, even if it is small in comparison to the federal portion.

An amendment was added to Section 51-a in 1945 to address this. It place limits on the matching grants that were made available to the state to "needy aged, needy blind, and needy children."[26] State spending was capped at thirty-five million dollars, and the maximum monthly payment was capped at twenty million. After a series of amendments increased both caps, the limit was replaced with a cap of no more than one percent of the state budget to be spend on assistance in any biennium. This limit is still in place.

Limit on the Rate of Growth of Appropriations. By the late 1970s, tax payer revolts were common throughout the United States. In Texas these led to the addition of the Tax Relief Amendment, Article 8, Section 22 (Taxation and Revenue). This places limits on the increased spending in successive appropriations bills. The increase cannot exceed the economic growth in the state during that period. The limit is focused primarily on the operating costs of government—what is contained in the General Revenue Fund.

Being a low services state, and given the expansion in the powers of government since the Great Depression, along with the presidency of Lyndon Johnson, concerns were raised that Texas government would become too expansive. Placing limits on the rate of spending was considered an effective way to curtail it. Setting that rate to the growth of the economy seemed a reasonable way to allow for necessary growth, though this restriction did not apply to areas of spending dedicated by the constitution for certain defined areas of spending such as highway construction and the Available School Fund.

Limit on Debt Service. By 1997, the state of Texas commonly issued bonds—as constitutional amendments with the approval of the voters of the state in ratifying elections—to fund defined projects such as highway and prison construction, farm and ranch loans for veterans, and water development projects. These amendments are generally added to Section 49 of Article 3 of the constitution. A perusal through Article 49 allows us to see what those projects have been:

- Veterans' Land Board, Bond Issues, Veterans' Land and Housing Funds (49-b);
- Texas Water Development Board, Bond Issue, Texas Water Development Fund

  (49-c);

- Development of Reservoirs and Water Facilities, Sale, Transfer, or Lease of

  Facilities or Public Waters (49-d);

- Texas Park Development Fund, Bonds) (49-e);
- Bonds for Financial Assistance to Purchase Farm and Ranch Land and for Rural

  Economic Development (49-f);

- Superconducting Super Collider Fund (49-g);
- Bond Issuance for Correctional and Statewide Law Enforcement Facilities and for

  Institutions for Persons with Intellectual and Development Disabilities (49-h);

- Texas Agricultural Funds, Rural Microenterprise Development Fund (49-i).

In 1997, Section 49-j was added to Article 3 as a response to the increase level of debt carried by the state. A cap was placed on the obligation that the general revenue fund had to service the debt. The limits was set at “five percent of an amount equal to the average of the amount of general revenue fund revenues.”[27]

Where Do Federal Funds Go? The total amount of federal funds received by the government of Texas is $86.4 billion. **Figure 13.10** shows how that breaks down across areas of spending in the state.

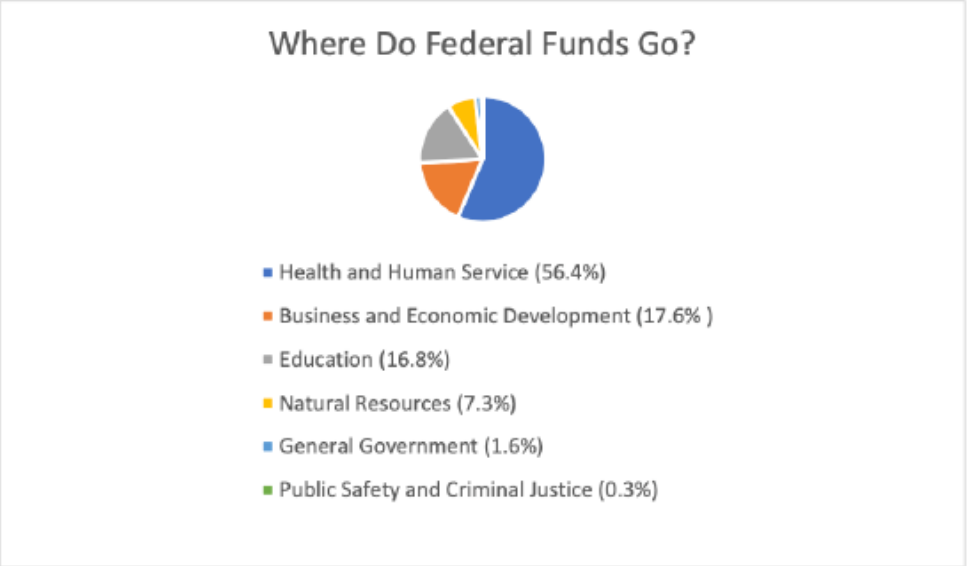


Figure 13.10 Where Do Federal Funds Go? SOURCE: 2020-2021 Budget Estimate.

The primary purpose of federal funds is to ensure that the states enforce federal law. These include Social Security, Medicare, unemployment compensation, and disability. States, such as Texas, saw little need to place conditions on who receives these funds. As a result, they come to Texas by being directly placed in the pockets of those eligible for them. Federal funds also come to the state through direct spending on military bases such as Fort Hood, national parks, forests, and monuments, federal offices and employees, as well as money appropriated as a result of natural disasters.[28] Recently the state legislature has been wrestling with how to allocate federal stimulus funds it has received due the economic harm caused by the Coronavirus pandemic. These funds are relatively non-controversial.

The same is true for transportation grants and National Highway System Funding. These benefit both intrastate and interstate commerce, meaning that it would be a concurrent power under the constitutional jurisdiction of the national and state governments. Both levels cooperate

to ensure that the transportation systems in place are sufficient to serve the needs of industry and the general population. The goals of the state and the goals of the nation are more or less in sync, despite occasional disputes regarding mass transit and the actual placement and design of highways. Highway project grants are awarded on a competitive basis.[29]

As discussed earlier in the chapter, other areas of federal spending are very controversial. For example, those related to assistance to the poor. These funds are sent to the state in a variety of forms. These can be matching grants, allocations, payments, or reimbursements. The state is in a position to impose requirements for receiving funds. This process is called *means testing*. The largest category of federal funding is for Medicaid. Other funds are allocated to local educational agencies, such as the National School Lunch Program, Special Education Basic State Grants, the CHIP, TANF, and the Head Start Program.

What determines the amount of money distributed by the federal government to Texas, or to any state? The amount of funding is not negotiated by a legislature, rather it is determined by a series of formulas that are described in the grants given to the states. Some, such as TANF, are awarded as block grants with few conditions regarding expenditures as long as they have the desired measurable results. Others, such as Head Start, are awarded as categorical grants which are more restrictive.

Expenditures for Each Area of Public Policy The amount of spending in the various categories described in the Fiscal Size-Up total $248.3. **Figure 13.11** breaks down spending projections from the 2020 – 2021 budget for state agencies.

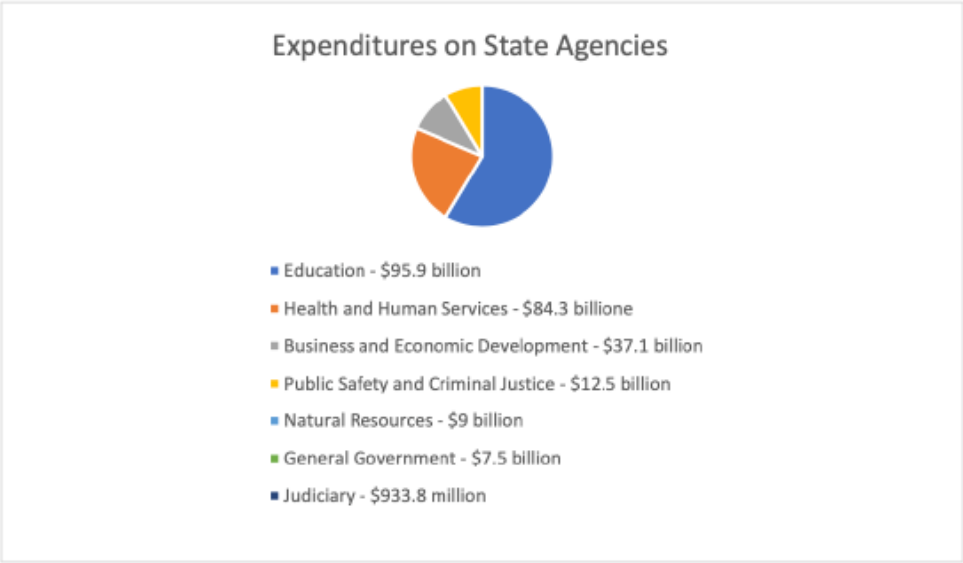


Figure 13.11 Expenditures on State Agencies, SOURCE: 2020-2021 Budget.

Agencies of Education This category includes both K-12 (primary and secondary education) and higher education, which includes two year institutions. The bulk of spending is on the former— $64.7 billion—the remainder—$22.7 billion—is on higher education. The most consistent source of funding for education comes from the Permanent School Fund (PSF), which was begun with money contributed from the sale of western lands in 1850, and continues with revenue drawn from further sale of lands, as well as resources are drawn from the land. A similar fund, the Permanent University Fund (PUF**),** was created to fund two of the state's public universities— the University of Texas and Texas A&M University. In response to criticism from other state universities, the state created the Higher Education Assistance Fund as an endowment to fund non-PUF institutions.

These figures only reflect the money that is contributed by the state. Funding for K-12 is also drawn from each of the over 1,000 independent school districts throughout the state in the form of property taxes. The fifty community college districts in the state can also draw property taxes, which other general academic institutions cannot. All higher education institutions charge tuition however. Altogether this means that the total amount spent on education in Texas far exceeds what is contributed in state dollars.

But this creates problems. Property taxes are assessed based on a combination of a property's appraised value and the tax rate set by the elected board of the local government. The amount that can be raised varies from district to district depending on the value of the property in each district. These differences in expenditures have been challenged by poor school districts in both state and federal courts.

As outlined in the chapter 11 on public policy, the United States Supreme Court refused to find that discrepancies in education funding violated the Equal Protection Clause on the Fourteenth Amendment. They noted in *San Antonio ISD v. Rodriquez* (1973) that a fundamental right to education does not exist in the U.S. Constitution, so there was no constitutional issue to raise.[30] But in *Edgewood Independent School District v. Kirby* (1989), the Texas Supreme Court agreed that the reliance on property taxes, which led to the imbalance, was the result of a lack of sufficient funding by the state of Texas in violation of Article 7 of the Texas Constitution.[31] It requires that "the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."[32]

The decision mandated that the legislature develop a more equitable system of school finance, and in 1993 they would eventually develop the recapture program. Wealthy districts would pay into a fund which would be redistributed to poorer districts. In 2020-2021, 141 school districts paid approximately $1.9 billion to the state for recapture, meaning to redistribute to the poorer districts.. While it has been argued the program helps equalize education in the state, critics contend that the legislature uses these funds to justify reductions in state education funding, freeing them up for other areas of the budget.

Arguments were made that the legislature also violated the Texas Constitution's requirement for adequate funding when it drastically cut funding to education following the reduction in revenue as a consequence of the 2008 housing crash of the Great Recession.[33] The $5.4 billion cut could have been covered by the state's Rainy Day Fund, but the legislature opted not to draw the money to cover the loss. A lawsuit ensued brought by more than 600 school districts, but the Texas Supreme Court ruled that the cuts did not violate "minimum constitutional requirements" for funding.[34]

Independent school districts and community college districts are also allowed to sell bonds—if they are authorized by the voters in an election—in order to fund capital projects and the acquisition of property, among a few other things. (Critics have argued that these bonds put schools and communities at risk of insolvency, often pointing out that these bonds are sometimes approved for building relatively frivolous items such as football stadiums. On the other hand, these bonds have allowed school districts in rapidly growing areas such as the suburbs surrounding major population centers to meet the educational needs of their communities.

Given the amount of money spent on education in Texas, the legislature is constantly looking for ways to cuts back on it. Increases in local property values have led to increases in property tax collections. State legislators are attempting to use that additional local revenue to cut back on state spending. In 2020, the legislature has estimated that local property tax increases amount to $5.5 billion. In addition, the state legislature is considering using some of the COVID- 19 relief money allocated to the local school districts, through the state, to offset further state commitments to education funding.[35]

Health and Human Services With $84.3 billion in expenditures, Health and Human Services (HHS) is the second largest are of spending in Texas. It is not nearly as complex as spending in education. The level of spending is not simply due to a decision by the state, but rather by the national government when it passed the Social Security Amendments of 1965 which created both Medicaid and Medicare. Almost sixty percent of the money spent is from matching grants that the state receives from the national government to implement Medicaid, TANF, and CHIP, among others. Expenditures are based on caseloads for those programs, which in turn is limited to those deemed eligible for assistance.

Total expenditures the are a function of who is eligible, and who applies for the benefits. This is true for Medicaid, TANF, and CHIP. Eligibility is based on income relative to the federal poverty level (FPL), which in 2021 was set at $21,960 for a family of three.[36] Eligibility levels vary in Texas based on a number of factors including the age of children and whether a woman who receives Medicaid is pregnant. Generally, Medicaid is only available for people with incomes below the FPL. Incomes can be slightly higher for CHIP. Texas, controversially, remains one of the state's that has refused to expand Medicaid to 133 percent of the FPL, despite the offer of cost sharing from the federal government that provides a federal matching rate starting at 100 percent and going down no lower than ninety percent.

Business and Economic Development This area of spending is unique in that it includes very little funding from the General Revenue Fund. Of the thirty-seven billion dollars it was budgeted, less than one billion comes from, combined, the General Revenue Fund and the General Revenue – Dedicated Funds. $15.1 billion—forty-one percent of the total—comes from federal funds. $20.8 billion—56.2 percent of the total comes from other funds. The reason is simple. The bulk of the funds are spent building highways and other transportation projects across the state which are funded uniquely.

Public Safety and Criminal Justice Almost all the expenditures on public safety and criminal justice come from the state's General Revenue Fund (96.2 percent), meaning that it is largely discretionary. Very little is committed to any one areas of spending, as opposed to spending on business and economic development. About half of the revenue spent in this area is on the statewide penitentiary system. Another $2.3 billion is spent on the Department of Public Safety, which is the largest statewide police force in Texas. The rest is split between juvenile justice, the military, and the Alcohol Beverage Commission.

Natural Resources Nearly ten billion dollars is spent on the management of natural resources. Seventy percent of these funds are federal, and 14.5 percent are form Dedicated General Funds. The top recipients of appropriated funds in 2020-2021 are the General Land Office and the Department. Each receives a significant amount of revenue from federal funds. In the case of the Department of Agriculture much of this spending is in the form of child and nutrition programs, and in that of the General Land Office, it was due to disaster recovery efforts.

General Government This section funds the executive branch, with the exception of the regulatory agencies which are listed separately. These include the elected offices of Texas's plural executive branch. Most funding for these agencies come from the General Revenue Fund, with additional moneys coming from all other funds.

Judiciary Appropriations for the Judiciary come primarily from the General Revenue Fund, and are augmented with funds collected from fees and civil penalties among other sources. The total level of appropriations is responsible for maintaining sixteen separate courts (The Supreme Court, The Court of Criminal Appeals, and fourteen Courts of Appeals) and the salaries of the judges and justices. The costs of district courts are handled by the counties.

Regulatory The regulatory agencies are a component of the executive branch, and are charged with regulating business in the state. The agencies are designed to focus on specific industries and occupations and are funded largely by those industries and occupations through fees. As discussed in chapter 7 on the executive branch, these agencies are headed by boards composed of people appointed by the governor. By far, the largest agency in the state is the Department of Insurance, with a budget of

$271.6 million. Other agencies include the Texas Medical Board, the Texas Board of Nursing, the Texas Racing Commission, and the Public Utility Commission. ***Legislature*** The smallest area of appropriations is for the legislative branch. The basic design of the legislature—which includes it meeting only five months every other year and $600 per month pay for legislators. The low overall level of funding for the legislative branch is a reflection of this. Almost all appropriations are drawn from the General Revenue Fund. In addition to the two chambers, the appropriations also fund supporting agencies such as the Legislative Budget Board (the agency responsible for these numbers), the Legislative Council, the Sunset Advisory Commission, and the Legislative Reference Library (**Figure 13.12**).

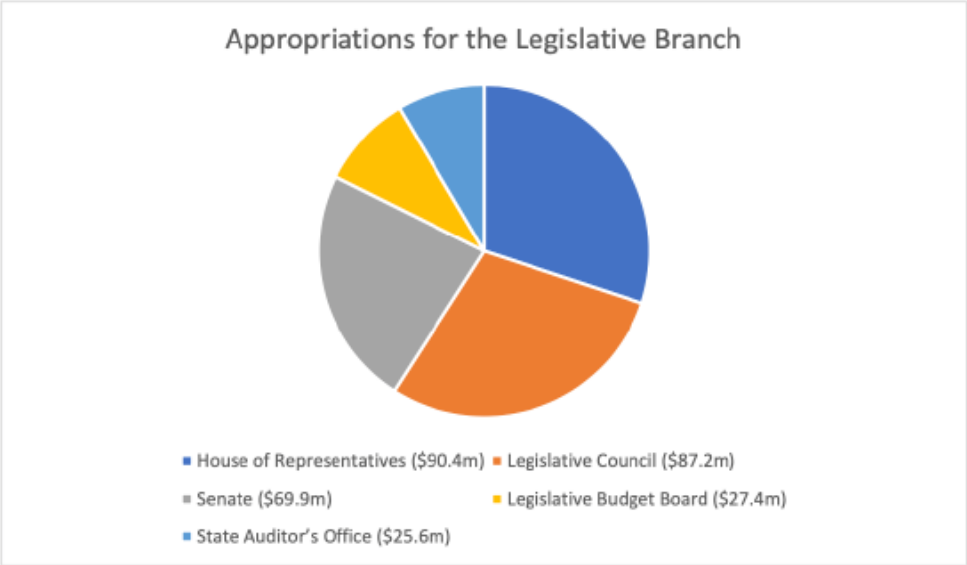


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13.5: Conclusion

Texas has always kept tight control of its finances. This remains the case even as the state has loosened some of the strict rules regarding debt that were inserted in the original version of the 1876 constitution. Equally strict rules regarding budgeting were put in place to keep spending in line, or at least manageable. The purpose of this chapter has been to familiarize you with the process and the outcome.

The Texas Constitution originally set in motion the basics of government finance. The development of a budgeting process put in place a flow of revenue in order to ensure that the state's agencies are properly, and appropriately, funded. The essential purpose of the budget is to manage the flow of funds into and out of the state treasury. This involved a look at the actual numbers produced by the Legislative Budget Board and presented in the Fiscal Size-Up. Ideally, now that you have read this chapter you have a solid understanding of the nature of revenue collection—both tax and non-tax—in the state, as well as of the various funds these revenues are deposited in. These funds then become the basis for the expenditures across each area of public policy in Texas. Along the way, there are disputes and controversies, but hopefully you can now make sense of whatever information regarding finance comes your way.

Key Terms and Concepts

Appropriations - A legislative act which authorizes agencies to drawn a specified amount of money from the state treasury for specific purposes.

Balanced Budget – An occurrence when the revenues collected by the states during a fiscal period are equal to expenses.

Constitutional Limits on Spending - Specific limits placed in the Texas Constitution on the amount of spending that can be approved by the state legislature.

Dedicated Funds – Areas of spending in Texas that are designated for specific purposes, for example spending on highways or education.

Economic Stabilization Fund - Also known as the "rainy day fund," this was a reserve fund established by the Texas Legislature in the late 1980s to provide for additional revenue to compensate for unanticipated shortfalls in revenue.

Excise Taxes – A tax that is placed on the sale of a specific good, and is imposed upon the supplier of the good, rather than the purchaser if it.

Federal Funds – Revenue that is sent to the state of Texas, generally in the form of matching grants, to fund projects that are mandated or encouraged by the federal government. Examples include Medicaid and spending on highways.

Fiscal Notes – An estimate of the anticipated costs of a proposed bill being considered by the Texas Legislature. They are prepared by the Legislative Budget Board and are intended to assist the maintenance of a balanced budget.

Fiscal Size-Up – A document prepared by the Legislative Budget Board after each regular session of the Texas Legislature which documents all revenue collection and expenditures authorized during that session.

Fixed Funds – Funds which are collected in a manner that does not allow it to be modified readily by the Legislature. For example, the amount of money spent on Medicaid in Texas each year is "fixed" based on the number of people who qualify and apply for it.

General Revenue Estimate – A constitutionally required estimate of the likely amount of taxes and other revenue that will be collected by the state during a biennial fiscal period. The Texas Legislature cannot authorize more general revenue spending than this amount.

General Revenue Funds – Revenue collected by the state sales tax, among other sources, are placed in the General Revenue Fund, which can then be shifted as the legislature and governor think necessary. It is often referred to as the state's operating budget.

Hidden Taxes – Taxes, such as excise taxes, which are paid by the provider of a good rather **than the consumer**. They are "hidden" because the tax is indirectly imposed on the consumer. The gasoline tax is an example. The general sales tax is not

hidden because the amount paid is made clear to the consumer.

Income Tax – A tax imposed on the income earned by a person. This is the most common form of taxation on the national level. Its imposition by the state of Texas has recently been ruled unconstitutional.

Legislative Budget Board (LBB) – A permanent joint committee of the Texas House and Senate which provides the staff which helps prepare the Texas budget.

Lottery – An additional source of revenue made legal in Texas by a constitutional amendment in the early 1980s. It is overseen by the Texas Lottery Commission and is self-financing. Excess revenues are spent on education.

Margins Tax – The principle way that Texas taxes businesses in the state. It replaced the franchise tax. The amount taxed is based on a "margin" calculated based on the amount of federal taxes paid by the business.

Matching Grants – The primary vehicle through which states receive federal funds. The federal government pays a specific amount to be "matched" by the state.

Pay-As-You-Go – The process by which Texas attempts to maintain balanced budgets. In principle, expenditures are limited to the amount of funding collected at any moment in time. **Progressive Tax** – A tax where the burden falls on the wealthy. An example is the marginal income tax, where the rate increases as income passes specific thresholds.

Performance Based Budgeting – A recent modification to the Texas budget process where state agencies have to submit goals and objectives along when they request money from the legislature.

Regressive Tax – A tax where the burden falls mostly on people with lower incomes. The sales tax is commonly used as an example. Consumer spending is a higher percentage of their incomes than with upper income people, meaning that sales taxes impact them more than the wealthy.

Severance Tax – A one-time tax on an item that is extracted – or severed – from a source. Examples include oil and gas taxes which are collected as they are drawn from the ground.

Sin Taxes – An excise tax focused on items that some deem harmful, such as alcohol, cigarettes, and gambling. Part of the purpose of the tax is to make the behavior more expensive, which might deter people from it.

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